

**DOMESTIC AND
INTERPERSONAL
VIOLENCE
PROSECUTION POLICY
AND PROCEDURE
MANUAL**

2020

OFFICE OF THE ATTORNEY GENERAL
OFFICE OF VICTIMS ADVOCACY

Office of the Attorney General

Office of Victims Advocacy

1024 Capital Center Drive, Suite 200

Frankfort, KY 40601-8204

(502) 696-5312 or (800) 372-2551

Email: denise.durbin@ky.gov

Office of Victims Advocacy

Hon. Denise Durbin, Executive Director

Alicia Parham, Executive Advisor

Aaron Ash, Victim Advocate

Miranda Brown, Victim Advocate

Robyn Diez d'Aux, Program Coordinator

This Manual was reviewed and edited, pursuant to KRS 15.717, by various professionals working in the field of domestic violence. Special thanks to the Kentucky Attorney Special Prosecution Unit for prosecution review.

The Office of the Attorney General does not discriminate on the basis of protected classes: race, color, religion, sex, national origin, sexual orientation, gender identity, ancestry, age, disability, veteran status, or genetic information in employment or in the provision of services and provides, upon request, reasonable accommodation necessary to afford such individuals with disabilities an equal opportunity to participate in all programs and activities. Printed with State Funds KRS 57.375

Office of the Attorney General



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITAL COMPLEX EAST
1024 CAPITAL CENTER DRIVE, SUITE 200
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 573-8317

July 31, 2020

Dear Kentucky Prosecutors,

Thank you for your tireless work on behalf of Kentuckians. Your commitment to pursuing justice on behalf of victims of crime and holding offenders accountable is essential to improving the public safety outcomes of all 120 Kentucky counties.

Our office is committed to partnering with you and supporting you in your work by providing resources such as the enclosed Domestic and Interpersonal Violence Prosecution Policy and Procedure Manual. The manual is part of a concerted effort by our Office of Victims Advocacy to assist you in your pursuit of victim-centered prosecution. It includes resources and best practices for prosecuting cases involving domestic and interpersonal violence.

According to the Centers for Disease Control's most recent survey on intimate partner violence, one in three women and one in four men in the United States have experienced some form of physical violence by an intimate partner. These statistics are unacceptable, and we must continue working together to reduce incidents of domestic and sexual violence in our communities.

Please do not hesitate to reach out to our Office of Victims Advocacy at (502) 696-5312 if you need additional assistance or have questions about the material included in this manual.

Sincerely,

Daniel Cameron
Attorney General



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

ANDY BESHEAR
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601

Dear Prosecutors,

When I entered office, I pledged to work toward protecting Kentucky families through a four-part mission:

- protecting seniors from scams and abuse;
- better addressing Kentucky's drug epidemic;
- preventing and prosecuting child abuse; and
- seeking justice for victims of rape and sexual assault.

Confronting domestic violence, dating violence, stalking and sexual assault is essential to keeping Kentuckians safe. One in three Kentucky women will experience domestic violence in her lifetime. 45% of female homicide victims and 4.9% of male homicide victims in the U.S. were murdered by an intimate partner. Children suffer when they are exposed to domestic violence, or when their non-offending parent is hurt or killed by an abusive partner.

These statistics must change. As prosecutors, you are the front line of defense to keep victims safe and hold offenders accountable. We at the Office of the Attorney General stand with you in this challenge. This manual, developed by our Office of Victims Advocacy, provides a framework of laws, resources and best practices to help you pursue victim centered prosecutions.

I am proud of the work my office is doing to stop this cycle of violence and I am thankful for your commitment to justice and pursuing safety for victims.

Sincerely,
Andy Beshear

TABLE OF CONTENTS

Letter from the Attorney General	ii
Policy Statement	1
CHAPTER 1: Prosecution Policy in Domestic and Dating Violence Cases	4
A. The Role Of The Prosecutor	4
1. What Constitutes Domestic and Dating Violence	4
2. Policy For Filing Actions In Cases Of Domestic and Dating Violence	5
a. Dynamics of Domestic Violence	6
b. Lethality and Risk Assessment.....	7
B. Assignment Of Domestic and Dating Violence Cases	9
1. Designation of Specific Prosecutor.....	9
2. Priority For Domestic Violence Cases	9
3. Pursue Additional Charges During Prosecution Of Original Charges	10
4. Kentucky Revised Statutes Applicable To Domestic Violence Cases	11
5. Double Jeopardy And Domestic Violence Cases	17
6. Violation of Protective Order or Interpersonal Violence Order	18
C. Disposition Of Domestic and Dating Violence Cases	19
1. “Zero Tolerance”/Pro-Prosecution Policy	19
2. Pretrial Release and Conditions of Release.....	20
3. Case Conferencing Among Agencies.....	22
4. Conflict of Interest.....	23
5. Mediation In Domestic and Dating Violence Cases	23
6. Alternative Sentencing Policy.....	24

D. Mandatory Domestic Violence Training for Criminal Justice Professionals	24
1. Prosecutors	24
2. Victim Advocates.....	25
3. Law Enforcement	26
E. Innovative Ideas In Response To Domestic Violence	26
CHAPTER 2: <i>Domestic Violence and Abuse Act</i>	28
A. Statutory Provisions	28
1. Legislative Intent of The Act (KRS 403.715).....	28
2. Definitions for The Act (KRS 403.720).....	28
3. Additional Definitions.....	29
4. Identifying Victims of Domestic and Dating Violence and Abuse and Making Referrals for Voluntary Services.....	30
B. Filing A Domestic Violence Petition (EPO or DVO).....	33
1. Who Can File A Domestic Violence Petition?.....	34
2. What Behavior Constitutes Domestic Violence?	35
3. What Is The Difference Between an EPO and a DVO?	35
4. Where, When and How Is An Order of Protection To Be Filed?	36
5. Consequences of Violating an EPO, DVO, or a Foreign Protective Order. (KRS 403.763).....	40
C. Processing of Domestic Violence Civil Complaints	41
1. Duties of the Judge	41
2. Duties Of The Court Clerk	46
3. Duties of the County Attorney	47

D. Duties of Law Enforcement Officers	47
1. Providing and Verifying (KRS 403.725 (4))	47
2. Preventing Further Abuse At The Scene (KRS 403.785(2))	47
3. Safe Environment	48
4. Crime Victims Bill of Rights (KRS 421.500(3))	48
5. Duty to Report Actual or Suspected Domestic Violence and Abuse	49
6. Giving notice of orders to respondents (KRS 403.745(1))	49
7. Arresting respondents who violate orders (KRS 431.015(c))	49
8. Good Faith Immunity From Liability	50
E. Duties of Law Enforcement Agencies.....	50
1. Reporting Domestic Violence To CHFS (KRS 403.785(5)) REPEALED 17 HB 309..45	50
2. Entering Records Into LINK (KRS 403.751(3))	50
F. Duties of the Administrative Office of the Courts	50
G. Making Foreign (Out-of-State) Protective Orders Effective In Kentucky	50
1. Peace officer treatment of a foreign protective order (KRS 403.7521)	51
2. Filing and enforcement of a foreign protective order (KRS 403.7527)	52
H. Effect of Domestic Violence On the Right To Carry A Concealed Weapon	52
CHAPTER 3: Interpersonal Protective Orders	53
A. Statutory Provisions	53
1. Legislative Intent of the Act	53
2. Definitions for the Act (KRS 456.010)	53

B. Filing for an Interpersonal Protective Order.....	54
1. Who may petition for an interpersonal protective order?	54
2. Where, when and how is a petition for an interpersonal protective order filed? ..	55
3. Consequences of violating an interpersonal protective order (KRS 456.180) ..	58
C. Processing of Interpersonal Protective Orders	58
1. Interpersonal Protective Order Intake Centers	58
2. Duties of the Judge	58
3. Duties of the Court Clerk	65
4. Duties of the County Attorney	65
D. Duties of Law Enforcement Officers	66
1. Providing and Verifying (KRS 456.030(4))	66
2. Preventing Further Abuse at the Scene (KRS 456.090(2))	66
3. Assisting in having the provisions complied with (KRS 456.090)	66
4. Giving notice of order to respondents (KRS 456.070(1))	66
5. Arresting respondents who violate orders	67
6. Special Warrantless Arrest Power (431.015) – Violation of a Domestic Violence, Protective Order, Interpersonal Protective Order or a Foreign Protective Order. (KRS 431.015 and 403.7521)	67
7. Good Faith Immunity From Liability	68
E. Duties of Law Enforcement Agencies	68
1. Entering Records into LINK	68
F. Duties of the Administrative Office of the Courts	68

G.	Making Foreign (Out-of-State) Protective Orders Effective in Kentucky (KRS 456.120 – 170).....	68
1.	Presumption of validity (KRS 456.120(1))	68
2.	Peace officer treatment of a foreign protective order (KRS 456.120(2)-(4)) ...	68
3.	Legal proceedings for violation of a foreign protective order (KRS 456.120(5)).....	69
4.	Filing a foreign protective order (KRS 456.140)	69
5.	Duties of court clerk (KRS 456.140(3))	70
6.	Duty of the court (KRS 456.150)	71
7.	Clearing a foreign protective order (KRS 456.160)	72
8.	Obligations of person filing a foreign protective order (KRS 456.170)	72
9.	Assisting a court of another state in determining whether an order is entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265. (KRS 456.130)	73
	CHAPTER 4: <i>Preliminary/Pretrial Issues</i>	74
A.	Laws of Arrest.....	74
1.	General Arrest Powers	74
2.	KRS 431.005(2) – Special Warrantless Arrest Power – Misdemeanor (Fourth Degree) Assault In A Domestic Situation	74
3.	KRS 431.005(5) – Special Warrantless Arrest Power – Violation Of Pretrial Release Order.....	75
4.	KRS 431.005(7) – Special Warrantless Arrest Power – Violation of A Stalking Restraining Order	75
5.	431.015 Special Warrantless Arrest Power – Violation of a Domestic Violence Protective Order, Interpersonal Protective Order or a Foreign Protective Order. (KRS 431.015 and 403.7521)	75
B.	Prosecution Case Preparation	76
1.	Establishment of Prosecution Policy	76

2. Pre-charging Considerations	76
<i>Domestic Violence Checklist</i>	76
3. Potential State Charges	77
4. Potential Federal Charges	79
5. Role of the Victim Advocate	80
APPENDIX	A-1
1. Domestic Violence and Sexual Assault Program Map	A-2
2. Power and Control Wheels	A-3
3. Resource List	A-8
4. Victim Rights Compliance List for Prosecutors	A-13
5. Domestic Violence Lethality Screening Tool	A-15
6. Domestic Violence Strangulation Worksheet	A-16
7. Americans with Disabilities Act (ADA) – Summary	A-17
8. ADA Information for Law Enforcement	A-25
9. Tips for Interacting with Individuals with Disabilities	A-26
10. Serving Victims with Limited English Proficiency	A-30

POLICY STATEMENT

Domestic violence and interpersonal violence (dating violence, stalking and sexual assault) occur with alarming frequency in our nation and in our Commonwealth. According to the Center for Disease Control, approximately 36% of women and about 34% of men experienced intimate partner violence in their lifetimes.¹ The impact of those who have experienced intimate partner violence is profound, including injuries and needing services. According to the CDC, one impact is fear for safety, stating:

For both female and male victims, the commonly reported impacts associated with having been a victim of intimate partner violence in one's lifetime were feeling fearful (61.9% of women and 18.2% of men), concerned for their safety (56.6% of women and 16.7% of men), and symptoms of post-traumatic stress disorder (51.8% of women and 16.7% of men).²

Our Kentuckians should not feel fearful in their own homes. In Kentucky, according to the same CDC survey, nearly one in three women will be a victim of domestic violence, 47% of Kentucky women will experience sexual violence and nearly one in four will be a victim of stalking, the highest in the nation. Men, too, are victims of these crimes, with nearly one in three having been raped, stalked or experienced physical violence by an intimate partner and one in five being a victim of sexual violence.³ In the state by state CDC study, there are 775,000 estimated victims of intimate partner violence per year.⁴

Domestic and interpersonal violence results in tremendous costs to the victims, their families and society in lost lives, injury, medical bills, lost wages and other concrete harms. On top of the concrete impact of interpersonal violence, no one should have to live in fear for their lives and safety.

Prosecutors play a key role in protecting victims and uphold public safety in cases of domestic violence, dating violence, stalking and sexual assault. Prosecutorial intervention through the criminal justice system greatly influences the behavior of both domestic violence offenders and their victims. It sends a clear message to perpetrators

¹ Smith, S.G., Zhang, X., Basile, K.C., Merrick, M.T., Wang, J., Kresnow, M., Chen, J. (2018). THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY (NISVS): 2015 Data Brief – Updated Release. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention

² Smith, S.G., Chen, J., Basile, K.C., Gilbert, L.K., Merrick, M.T., Patel, N., Walling, M., & Jain, A. (2017). THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY (NISVS) 2010-2012 State Report. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.

³ <http://www.kasap.org/images/files/GetInfo/KYFactsheet.pdf>

⁴ Smith, et. al. NISVS: 2010-2012 State Report, page 128, Table 5.7.

that their behavior is criminal, will not be tolerated in this Commonwealth and will result in serious consequences. Because of the unique dynamics of, and, oftentimes, inherent difficulties with domestic violence cases, the successful prosecution of these cases requires specialized techniques. Prosecutors must approach cases of domestic violence with not only specific legal knowledge of criminal and civil sanctions, but also an understanding of the dynamics of domestic and interpersonal violence and their traumatic impact upon the victim.⁵

“Domestic violence and abuse” means physical injury, serious physical injury, stalking, sexual abuse, strangulation, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, strangulation, or assault between family members or members of an unmarried couple.”⁶ “Dating violence and abuse” means physical injury, serious physical injury, stalking, sexual assault, strangulation, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, strangulation, or assault occurring between persons who are or have been in a dating relationship.”⁷

While an act of domestic violence can be a civil contempt, a criminal violation, a misdemeanor offense or a felony offense depending upon the facts of the case, all cases of domestic violence should be treated as illegal conduct. A helpful tool when making charging decisions is asking yourself, “would this be tolerated if a stranger exhibited the same conduct?” A person who commits an act of domestic violence in any one of Kentucky’s 120 counties has committed a crime against the “peace and dignity of the Commonwealth of Kentucky”. Perpetrators should receive consistent, direct and clear messages of the criminal nature of domestic violence, and that they alone are responsible for their own behavior. While the victims’ safety is paramount, accountability is the second most important goal.

All perpetrators of domestic violence should receive appropriate sanctions as well as meaningful treatment for their abusive behavior.⁸ All victims of domestic violence should receive appropriate, trauma informed, supportive services and referrals.

⁵ See American Bar Association Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protective Order Cases http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/0908/Standards_of_Practice_for_Lawyers_Representing_Victims_of_DV_SA_Stalking.authcheckdam.pdf

⁶ KRS 403.720

⁷ KRS 456.010(2). All references to case law and Kentucky Revised Statutes state the law in effect June 26, 2019.

⁸ Under no circumstances should victims be ordered to complete treatment *with* the perpetrator. The perpetrators’ conduct is their responsibility to fix, not the victims’. Moreover, batterer’s treatment is best practice, not general anger management. Look for programs in the region that offer a certified batterer’s intervention program.

GOALS

The prosecutor should work to accomplish the following objectives at each stage of the criminal court process:

1. Stop the violence and prioritize safety.
2. Protect the victim through collaboration with victim services, law enforcement and other community partners.
3. Protect the children and other family members.
4. Ensure that the victim is informed of all stages and decisions in the court process.
5. Protect the general public.
6. Uphold the legislative intent and public sentiment that domestic violence be treated as a serious crime, and to communicate that intent to both the defendant and the victim.
7. Hold the offender accountable for his violent acts so that the violent behavior is not repeated.
8. Rehabilitate the offender so that the violent behavior is not repeated⁹.
9. Assist in the recovery of restitution for the crime victim.

⁹ It is best practice to require appropriate treatment for batterers. Appropriate treatment does not include a traditional “anger management program.” Instead, controlling abusers require specific batterers’ intervention programs in order to adequately address the underlying problem surrounding their need to control others. Only after adequate treatment will future risk of similar behavior diminish.

CHAPTER 1: *Prosecution Policy in Domestic and Dating Violence Cases*

A. The Role Of The Prosecutor

1. What Constitutes Domestic and Dating Violence

As a general rule, in criminal actions, Kentucky does not distinguish cases which involve domestic violence from any other criminal case, be it in charging or disposition¹⁰. However, statutory definitions can be found in KRS 403.720 which may assist prosecutors in identifying cases where the risk of further harm may occur. Prosecutors may wish to flag criminal case files which fall under these definitions with a D.V. stamp or colored sticker for the purpose of stricter monitoring by all prosecutors and victim advocates who may work on that case.¹¹ For the same reason, it is important to use the correct UOR code on charging documents so the “domestic violence” specifier is known to those involved. This is also important for enhancement. The defendant must also admit during plea colloquy to committing an act of domestic violence.

Definitions

- *Domestic Violence and Abuse* means physical injury, serious physical injury, stalking, sexual abuse, strangulation, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, strangulation, or assault between family members or members of an unmarried couple¹²
- *Family Member* means a spouse, including a former spouse, a grandparent, a grandchild, a parent, a child, a stepchild, or any other person living in the same household as a child if the child is the alleged victim.¹³
- *Member of an unmarried couple* means each member of an unmarried couple which allegedly has a child in common, any

¹⁰One exception being KRS 508.032 which provides for an enhanced penalty if an individual is adjudged guilty on a third or subsequent offense of assault fourth degree upon a victim who meets the definition of family member or member of an unmarried couple as defined in KRS 403.720.

¹¹ Because studies show that, 84% of spouse abuse victims are females, and 86% of victims of dating partner abuse are female, throughout this manual the victim will be referred to as “she” and the perpetrator as “he”. (U.S. Department of Justice, Bureau of Justice Statistics, Family Violence Statistics: Including Statistics on Strangers and Acquaintances, June 2005, NCJ 207846, available at [http:// www.bjs.gov/content/pub/pdf/fvs02.pdf](http://www.bjs.gov/content/pub/pdf/fvs02.pdf)).

¹² KRS 403.720(1).

¹³ KRS 403.720(2).

children of that couple, or a member of an unmarried couple who are living together or have formerly lived together.¹⁴

- *Dating Violence and Abuse* means physical injury, serious physical injury, stalking, sexual assault, strangulation, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, strangulation, or assault occurring between persons who are or have been in a dating relationship.¹⁵
- *Sexual Assault* refers to conduct prohibited as any degree of rape, sodomy, or sexual abuse under KRS Chapter 510 or incest under KRS 530.020.¹⁶
- *Stalking* refers to conduct prohibited as stalking under KRS 508.140 or 508.150.¹⁷
- *Strangulation* refers to conduct prohibited by KRS 508.170 and 508.175¹⁸
- *Physical Injury* means substantial physical pain or any impairment of physical condition.¹⁹

2. Policy For Filing Actions In Cases Of Domestic and Dating Violence

The prosecutor's office should not serve as an obstacle to the initiation of domestic violence actions. When considering a charge or indictment, the prosecutor needs to consider the dynamics of domestic violence. Additionally, once a charge is made, risks to the victim and lethality of the perpetrator should be assessed. The prosecutor's office, in cooperation with the court, should provide for 24-hour accessibility for warrants, protective orders and prompt relief when protective orders or conditions of release are violated.

A charge, whether it be a misdemeanor or a felony indictment, should be pursued by the prosecutor without regard to the marital status or availability of the victim²⁰. Moreover, a prosecutor should not decline to prosecute solely on the basis of reluctance expressed by the victim. The victim's

¹⁴ KRS 403.720(5). The statutes do not define "couple" or "living together". See *Ireland v. Davis*, 957 S.W.2d 312, 313 (Ky. App. 1997) (Interpreting the word "couple"). *Barnett v. Wiley*, 103 S.W.3d 17 (Ky. 2003) (Interpreting "unmarried couple"). See also, *Randall v. Stewart*, 223 S.W.3d 121 (Ky. App. 2007); *Rivers v. Howell*, 276 S.W.3d 279 (Ky. App. 2008).

¹⁵ KRS 456.010(2).

¹⁶ KRS 456.010(6).

¹⁷ KRS 456.100(7).

¹⁸ KRS 456.010(8).

¹⁹ KRS 500.080(13).

²⁰ Prosecuting cases without the participation of the victim is obviously dependent upon the strength of the evidence without the victim's testimony.

safety should be considered in all decisions. Instead, the decision to prosecute a domestic violence related case should be based on the same probable cause standard upon which all other criminal charges are based. While the availability of sufficient evidence to prove the charge is paramount to the outcome of the case, it should not be paramount in the decision to make the initial charge. Unlike other criminal actions, prosecutors will find that domestic violence cases will require ongoing or further investigation following a probable cause charge in order to sustain the burden of proof beyond a reasonable doubt later on in the process. Therefore, prosecutors should be mindful of this and consider drafting a warrant following probable cause, knowing that more investigation must occur.

According to the National District Attorneys Association, “Prosecutorial discretion is an effective tool for addressing domestic violence cases and is favored over a blanket no drop policy. Given the dynamics of domestic violence and issues unique to domestic violence victims, a blanket policy may be too restrictive.”²¹

a. Dynamics of Domestic Violence

Intervention with domestic violence in the legal system requires an understanding of the dynamics of domestic violence.

Signs of domestic violence are not always easily recognized. Recognizing that a victim may be abused or controlled by a partner requires an understanding of the range of violence and abuse to which one may have been exposed, the strategies one may have used to protect one’s self and their children, and the ways in which the violence may have impacted them psychologically, physically, economically and socially. As a prosecutor, understanding the dynamics of domestic violence is essential to insure that a case is properly considered and appropriately charged. Without a basic knowledge of these dynamics, a case may fall through the cracks and possibly result in deadly consequences.

- *Forms of domestic violence*

Domestic violence can take many forms such as physical assault; sexual assault, including spousal rape; emotional or psychological

²¹ NATIONAL DOMESTIC VIOLENCE PROSECUTION BEST PRACTICES GUIDE, National District Attorneys Association, Women Prosecution Section, p 24 (July 17, 2017). Available at <https://ndaa.org/wp-content/uploads/NDAA-DV-White-Paper-FINAL-revised-July-17-2017-1.pdf>.

violence; psychological battering and destruction of property or pets; and threats to personal safety of self and loved ones.

With each form of domestic violence, the abuse:

- is done with the intent to harm the well-being of the victim, either mentally or physically;
- is done to show control and domination;
- usually occurs again and tends to escalate in frequency and severity unless changes are made to stop the violence.

The various forms of violence usually occur together; rarely is one form of abuse used.

- *Causes of violence between intimate partners - Power and Control*
There are universal tactics in dating and domestic abuse all centered around power and control by the perpetrator. These tactics include using emotional abuse; isolation; minimization, denial, and blaming; the children; male privilege; economic abuse; coercion and threats; and intimidation. These behaviors are reinforced by the perpetrator through acts of violence intended to control the thoughts, feelings, and actions of the victim.

b. Lethality and Risk Assessment

The dynamics of domestic violence, its recurrence and lethal nature require that cases involving domestic violence be strictly monitored and promptly charged or indicted when probable cause exists.

Without effective early intervention, domestic violence can escalate in severity and lead to death. When domestic violence results in homicide, it is often a reflection of the community's failure to recognize the severity and potential lethality of the problem, and to address its critical role in early intervention.

"When battered women are killed by their abusers, it frequently occurs after they have been separated from them or taken other action to end the relationship. Since society continues to question why women remain in abusive relationships, it is essential to consider how dangerous and difficult it often is for battered women to leave abusive

partners. Many women stay because of a reasonable fear that they will suffer severe injury or death if they attempt to end the relationship.”²²

- *Lethality checklist/danger assessment*

A critical component of intervention in these cases is the assessment of the perpetrator’s lethality. The necessity in doing a lethality assessment is obvious during court proceedings setting bail, subsequent motions for bond reduction and when considering conditions of release or conditions of an EPO/DVO/IPO. While it may be difficult to foresee who might commit a homicide, there are some “red flag” factors that may assist judges and prosecutors in determining when a victim may be at greater risk of severe injury or death at the hands of a perpetrator. This information can be obtained from the victim, the perpetrator, family members, friends, law enforcement personnel responding to a call, social services workers or advocates of other agencies assisting the victim. Further, this information should be obtained as early in the process as possible. A procedure could be established to allow this information to be collected when law enforcement responds to a domestic violence call, when an EPO is sought or when criminal complaints are initially filed. See *Pettingill v. Pettingill*, 480 S.W. 3d 920 (Ky. 2015) (*In decision to grant a protective order a Judge may rely on his knowledge of lethality factors*).

A risk/danger assessment tool can be utilized, prior to or after the charge, to gather important information. A danger/risk assessment tool can be found at <http://www.dangerassessment.org/>. If the complaining witness, whether the victim or a law enforcement officer, provides an affirmative answer to any of the risk and lethality questions the prosecutor should proceed with caution. If several of these behaviors or issues are present, a serious domestic violence case exists which requires prompt charging.

Prosecutors should encourage community and governmental agencies to develop and implement standardized abuse and neglect detection and reporting procedures. The prosecutor should contact relevant agencies and carefully review documents related to

²²Paymar, Michael, Building a Coordinated Community Response to Domestic Violence Assault: An Overview of the Problem.

complaints. All substantiated cases should be pursued regardless of gender. Where a perpetrator may be attempting to manipulate the prosecutor or the victim (e.g. taking a warrant on her to intimidate her from prosecuting him), intervention on that case should be delayed and thoroughly investigated prior to any action being taken.

When charges are not filed or an indictment is not returned, there should be documentation retained by the prosecutor's office on their decision. When appropriate, the matter should be referred to an agency for follow up and contact with the victim (e.g. law enforcement, Department for Community Based Services, domestic violence shelters). If previously identified evidentiary problems are resolved, the case should be returned promptly to the prosecutor to determine whether it should now be charged or presented to the grand jury.

B. Assignment Of Domestic and Dating Violence Cases The complexity and dynamics of domestic violence cases require special attention and training to insure successful prosecution.

1. Designation of Specific Prosecutor

The prosecutor's office should designate a specific prosecutor or unit to prosecute domestic violence cases and use vertical prosecution, when possible. Options available to effectuate vertical prosecution include the Commonwealth's Attorney's Office assisting the County Attorney in the district court phase of a felony, or the County Attorney's Office assisting the Commonwealth's Attorney in the circuit court trial of a felony. Designated individuals in the prosecutor's office should also be responsible for reviewing all agency reports, for example, Department for Community Based Services and law enforcement, involving incidents of domestic violence. They should develop an expertise in dealing with domestic violence in an effort to more accurately evaluate and effectively prosecute these cases. Specialized training for **all staff** in the prosecutor's office regarding the complexities of domestic violence crime will foster the development of trust and concern between the victim and prosecutor and increase victim's participation in prosecution.

2. Priority For Domestic Violence Cases

Prosecutors should give priority to the prosecution of domestic violence cases, expediting them through the criminal justice system due to the inherent danger to the victim and the psychological dynamics of domestic violence cases which, over time, can cause a deterioration of evidence. In most cases, the prosecutor should seek the earliest possible trial date and object to the defendant's motions for continuance. Offenders often utilize litigation abuse and should not be permitted to do so.

3. Pursue Additional Charges During Prosecution Of Original Charges

One of the main reasons victims are reluctant to initiate domestic violence proceedings is their fear of retaliation by the perpetrator against them or their family members. Therefore, the prosecutor must be willing to pursue additional charges against the perpetrator if he or his attorney attempts to harass, threaten, injure or intimidate the victim or other witnesses during the pendency of the original charges.

Possible charges to consider may be under KRS Chapter 524, such as Intimidating a Participant in the Legal Process, Tampering with a Witness or Violation of a Condition of Pretrial Release. When prosecuting additional charges, the prosecutor should consider higher bonds and the availability of consecutive sentences since these offenses are committed while the perpetrator is on bond for the original charges. Filing motions to revoke bond or asking the court to increase the amount are other options when the offender violates the court's bond conditions.

Additionally, given the cycle of violence common in most domestic violence cases, there is likely a history of violent contact by the perpetrator upon the victim. The prosecutor or the victim advocate should make a thorough inquiry into past violence. In all probability other crimes have been committed in the past. Such criminal conduct could; (1) be the basis of additional charges, if within the statute of limitations; (2) be used under KRE 404(b), "other bad acts" (prior or subsequent to charged offense) to show intent, lack of mistake, motive, identity, etc., or (3) be the basis for a Stalking First Degree or Stalking Second Degree charge when the prior acts are

used to satisfy the stalking element of “two or more acts” or to show the victim’s state of mind at the time of the stalking charge.²³

If safe to do so, the prosecutor should encourage the victim to obtain an EPO, DVO or IPO if such an order has not previously been obtained. Such orders not only provide an additional measure of protection but can possibly result in additional charges if violated.²⁴ In addition, Domestic Violence Orders and Interpersonal Protective Orders, may be issued for up to three or 10 years, depending if the order is under KRS Chapters 403, 508²⁵, or 510²⁶. As a result, the protection provided by these orders may be longer than the jail sentence, period of probation or conditional discharge for a criminal conviction. In certain high risk cases, seeking court-ordered protection could increase the risk of fatality. A trained professional could assist the victim in assessing future risk.

4. Kentucky Revised Statutes Applicable To Domestic Violence Cases

Note: Criminal prosecution is not a substitute for civil proceedings to obtain a protective order. Neither does the fact that a victim of a crime has a protective order against the defendant preclude a criminal prosecution. Civil proceedings to obtain a protective order and criminal prosecution are not mutually exclusive, although only one or the other can be pursued for violations.

- KRS 237.110 relating to firearms.

²³See, *Smith v. Commonwealth*, 904 S.W.2d 220 (Ky. 1995) [introduction of prior acts of physical abuse and evidence that victim had suffered unwitnessed physical abuse]; distinguished by *Bishop v. Commonwealth* 2009 WL 424989 (unpublished opinion); *McCarthy v. Commonwealth*, 867 S.W.2d 469 (Ky. 1994) (overruled on other grounds *Lawson v. Commonwealth*, 53 S.W.2d 534 (Ky. 2001) [introduction of both the history of EPOs and pending EPO]; *Matthews v. Commonwealth*, 709 S.W.2d 414 (Ky. 1986), cert. denied 107 S.Ct. 245, 479 U.S. 871, 93 L.Ed.2d 170 [relevant pattern of conduct]; *Todd v. Commonwealth*, 716 S.W.2d 242 (Ky. 1986) [“state of feeling” between the parties to establish motive]; *Driver v. Commonwealth*, 361 S. W. 3d 877 (Ky. 2012) [evidence of defendant's prior assaultive behavior toward victim was admissible to show the absence of accident or mistake].

²⁴ While a violation could amount to contempt or a criminal offense, both cannot be pursued. KRS 403.763(1) states:

Violation of the terms or conditions of an order of protection after the person has been served or given notice of the order shall constitute contempt of court and a criminal offense under this section. Once a criminal or contempt proceeding has been initiated, the other shall not be undertaken regardless of the outcome of the original proceeding.

²⁵ KRS 508.155 (stalking)

²⁶ KRS 510.037 (sexual assault IPO).

Prohibition to be licensed to carry concealed firearms or other deadly weapons if a person has been convicted of either Assault Fourth Degree or Terroristic Threatening Third Degree within the prior three years. Prohibition may be waived.

- KRS 508.032 relating to the Subsequent Assault Fourth Degree.
If a person commits a third or subsequent offense of Assault Fourth Degree within a five year period, and the relationship between the defendant and each victim meets the definition of family member or member of an unmarried couple as defined in KRS Chapter 403, the defendant may be convicted of a Class D felony. The victim of each offense need not be the same person. The 5 year period on the prior offenses is measured by the date of the offense, not the date of conviction.
- KRS 508.170 and 508.175 cover the Strangulation crimes. Both criminalize an individual impeding the “normal breathing or circulation of the blood of another person” by either applying pressure to the throat or neck or by blocking the nose of the victim. First Degree Strangulation includes an “intentional” *mens rea* and Second Degree Strangulation contemplates a “wanton” mental state.
- KRS 525.070 relating to Harassment.
Changes the penalty for Harassment from a violation to a Class B misdemeanor if there is actual striking, shoving, kicking or physical contact.
- KRS 520.095 relating to Fleeing or Evading Police.
This law makes it a Class D felony to flee or evade police in situations where the person is fleeing immediately after committing an act of domestic violence as defined in KRS 403.720.
- KRS 532.025(2) (a) (8) relating to aggravating factors in death penalty cases.
In cases for which the death penalty may be authorized the judge or jury determining the sentence shall consider as an aggravating circumstance whether the offender murdered the victim when an emergency protective order or a domestic violence order was in effect, or when any other order designed to protect the victim from the offender, such as an order issued as a condition of a bond, conditional release, probation, parole, or pretrial diversion, was in effect.
- KRS 431.064 relating to pretrial release.
The court or agency having authority to make a decision concerning pretrial release of a person arrested for a violation of KRS Chapters

508 or 510, or charged with a crime involving a violation of an order of protection as defined in KRS 403.720 or 456.010 is required to review the facts of the arrest and detention of the person and determine whether the person is a threat to the alleged victim or other family or household member and whether he is reasonably likely to appear in court. The statute also provides a list of conditions that may be imposed, provides that the victim is entitled to a free certified copy of the conditions of release and makes a violation of an order issued pursuant to this statute a Class A misdemeanor. Conditions must be entered into the computer system maintained by the Administrative Office of the Courts within 24 hours of the filing of the order of release, excluding weekends and holidays, and that the information be accessible to any agency designated a terminal agency for the Law Information Network of Kentucky.

- KRS 403.7521 relating to Foreign (out of state) Protective Orders. This law establishes a process for the full faith and credit of foreign domestic violence protective orders.
- KRS 403.751 All forms, affidavits, and orders of protection issued or filed pursuant to KRS 403.715 to 403.785 which require entry into the Law Information Network of Kentucky shall be entered on forms prescribed by the Administrative Office of the Courts after consultation with the Justice and Public Safety Cabinet.
- KRS 403.735 relating to renewal of emergency protective orders when the respondent has not been served. This law provides that when a respondent has not been served an EPO shall remain in place and a new summons with a new date and time for a hearing shall be set within 14 days of the original hearing date. This process may continue for up to 6 months. After that time the order is rescinded without prejudice but the petitioner may file a new petition before the first order is rescinded.
- FCRPP 13; KRS 403.725; KRS 456.030 relating to the establishment of domestic violence case procedures by all Kentucky courts.
- KRS 403.730- relating to the use of mediation. Parties may not be ordered or referred to mediation unless requested by the petitioner, and the court finds that:
 - a. The petitioner's request is voluntary and not the result of coercion; and
 - b. Mediation is a realistic and viable alternative to or adjunct to the issuance of an order sought by the petitioner.
- KRS 196.280 relating to confinement release notification.

This law established the nation's first statewide computerized victim notification system referred to as Victim Information and Notification Everyday or V.I.N.E. The Department of Corrections has created this system and jails and detention facilities are required to provide information to the Department prior to the release of an incarcerated person. In turn, the Department of Corrections is to provide to members of the public who request notification, notification of the release of an incarcerated person from a penitentiary, facility for youthful offender, county jail or regional jail.

- KRS 237.095 relating to persons barred by federal law from purchase of firearms; duty to notify courts and law enforcement agencies of purchase or attempt to purchase; protocol for providing notice; duty to notify petitioner; immunity from liability.
 - (1) Upon receiving notice that a person barred from purchasing a firearm under 18 U.S.C. sec. 922(g)(8) has purchased or attempted to purchase a firearm, any agency with the responsibility of entering domestic violence records into the Law Information Network of Kentucky shall notify:
 - (a) The court in the jurisdiction where the domestic violence order was issued under KRS 403.750; and
 - (b) The law enforcement agencies, as designated by the Department of Kentucky State Police, that have jurisdiction in the county where the domestic violence order was issued and in the county of the victim's residence if different from the county where the domestic violence order was issued.
 - (2) The Department of Kentucky State Police shall develop a protocol for providing notice to the required court and law enforcement agencies under subsection (1) of this section. Within the protocol, the Department of Kentucky State Police shall designate which local law enforcement agencies are to receive notice in each county. A minimum of one (1) law enforcement agency shall be designated in each county.
 - (3) When a designated law enforcement agency for the county where the domestic violence order was issued or where the victim resides receives notice under subsection (1) (b) of this section, that agency shall make reasonable efforts to ensure that the petitioner who obtained the domestic violence order is notified that the respondent has purchased or attempted to purchase a firearm.

(4) Any person carrying out responsibilities under this section shall be immune from civil liability for good faith conduct in carrying out those responsibilities.

(5) This section shall apply only to domestic violence orders issued, or reissued, on or after July 14, 2000, through July 15, 2002.

- KRS 237.100 relating to notification of purchase of firearm or attempt to purchase firearm; immunity

(1) Upon receipt of notice that a person barred from purchasing a firearm under 18 U.S.C. sec. 922(g) (8) has purchased or attempted to purchase a firearm, the Justice and Public Safety Cabinet shall make a reasonable effort to provide notice to the petitioner who obtained the domestic violence order issued under KRS 403.740 that the respondent to the order has attempted to purchase a firearm. The Justice and Public Safety Cabinet may contract with a private entity in order to provide notification.

(2) The notification shall be limited to a petitioner who has:

(a) Received a domestic violence protective order issued or reissued under KRS 403.740 on or after July 15, 2002;

(b) Received a domestic violence protective order that involves a respondent who is prohibited by 18 U.S.C. sec. 922(g) (8) from possessing a firearm; and

(c) Provided the Justice and Public Safety Cabinet or the entity with a request for notification.

(3) Any person carrying out responsibilities under this section shall be immune from civil liability for good faith conduct in carrying out those responsibilities. Nothing in this subsection shall limit liability for negligence.

- KRS 421.575 relating to victim advocates.

This law permits a victim advocate, upon request of the victim, to accompany the victim in all court proceedings to provide moral and emotional support. The victim advocate is permitted to confer orally and in writing with the victim in a reasonable manner but is specifically prohibited from providing legal advice.

- KRS 421.350 relating to child testimony in sexual assault prosecutions.

This law permits the testimony of a child who is 12 years of age or younger (at the time of the crime) who witnesses, as well as one who is a victim of, one of the listed offenses; (1) to testify outside of the courtroom and viewed by the court and jury by closed circuit television, or (2) to have his or her testimony videotaped before trial

to be shown to the court and jury during the trial. Before either of the procedures may be used the court must find that there is a compelling need for the use of these procedures.

- KRS 508.140 and 508.130 relating to Stalking.
These laws define the crime of stalking. For the purpose of KRS 508.130 “protective order” means:
 - (a) An emergency protective order or domestic violence order issued under KRS 403.715 to 403.785;
 - (b) A foreign protective order, as defined in KRS 403.720 and 456.010;
 - (c) An order issued under KRS 431.064;
 - (d) A restraining order issued in accordance with KRS 508.155;
 - (e) An order of protection as defined in KRS 403.720 and 456.010; and
 - (f) Any condition of a bond, conditional release, probation, parole, or pretrial diversion order designed to protect the victim from the offender.
- KRS Chapter 403.761 related to failure to wear a global positioning monitoring system monitoring device.
This law makes it a Class D felony to fail to wear, remove, or tamper with or destroy a GPS monitoring system monitoring device which the individual has been ordered to wear unless the individual has written permission from a court.
- KRS 510.037 – Interpersonal Protective Order Following Sexual Assault Conviction.

This provision allows for a 10 year IPO for the victim after the defendant is convicted of certain enumerated crimes under Chapter 510.

- KRS Chapter 511.085 related to domestic violence shelter trespass.
A person is guilty of domestic violence shelter trespass when:
 - (a) The person enters the buildings or premises of a domestic violence shelter that the person knows or should know is a domestic violence shelter or which is clearly marked on the building or premises as being a domestic violence shelter; and
 - (b) At the time of the entering, the person is the subject of an order of protection as defined in KRS 403.720 and 456.010.Domestic violence shelter trespass is a Class A misdemeanor.

- KRS 431.005(2) covers when a peace officer may arrest an offender without a warrant so long as the officer has probable cause to believe the offender committed an act of domestic violence.

5. Double Jeopardy And Domestic Violence Cases

Historical Perspective

In 1990, in the case of *Grady v. Corbin*, 495 U.S. 508, 110 S.Ct. 2084, 109 L.Ed.2d 548 (1990), the United States Supreme Court expanded the long-standing “same elements” analysis of claims of double jeopardy that was set out in the case of *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed.306 (1932). In *Grady*, the Court held that double jeopardy occurs when the ‘same conduct’ constituting one offense is used to prove an essential element of the other.

Only a few months after the decision in *Grady*, the Kentucky Supreme Court rendered the opinions in *Walden v. Commonwealth*, 805 S.W.2d 102 (Ky. 1991) and *Ingram v. Commonwealth*, 801 S.W.2d 321 (Ky. 1990) expanding the *Blockburger* test for purposes of double jeopardy analysis under Section 13 of the Kentucky Constitution. *Walden* and *Ingram* adopted “same conduct” and “single impulse” tests for double jeopardy analysis under the Kentucky Constitution.

After the decisions in *Grady*, *Walden* and *Ingram* it was unclear in Kentucky whether a person who violates an order of protection (e.g. EPO, DVO, restraining order) and is held in criminal contempt for that conduct may also be tried for violations of Kentucky’s criminal laws which occurred during the same course of conduct upon which the finding of criminal contempt was based. Victims of domestic violence often need the protection offered by the criminal contempt proceeding which can result in a more immediate incarceration of the defendant and a “cooling off” period. However, until this issue was recently addressed by the Kentucky Supreme Court, victims were often forced to forego the option of criminal contempt due to the fact that prosecution of the criminal charges might be barred. Prosecutors, too, were put in a difficult situation since a decision by a victim to have a perpetrator held in contempt in a civil proceeding, to which the Commonwealth was not a party, had the potential to bar prosecution of the perpetrator on serious criminal charges.

However, with the rendition of an opinion in the cases of *Commonwealth v. Burge*, *Herriford v. Commonwealth*, and *Commonwealth v. Effinger* 947

S.W.2d 805 (Ky. 1996) the law on this issue has been clarified. The Kentucky Supreme Court **held** that the **subsequent prosecution on the felony charges was not barred**. In reaching its conclusion, the Court held that criminal contempt is a crime for double jeopardy purposes, thereby requiring application of double jeopardy analysis to the facts of the cases before the Court. The Court returned to the traditional test set out in *Blockburger* as the **sole** test for double jeopardy analysis as the United States Supreme Court had done in *United States v. Dixon*, 509 U.S. 688, 113 S.Ct. 2894, 125 L.Ed.2d 556 (1993).

The Kentucky Supreme Court also held that in order to prove contempt there must be proof that the defendant had knowledge that a valid court order prohibiting the conduct was in effect.²⁷ Under this analysis, a finding of contempt for violation of a protection order will seldom, if ever, bar a subsequent prosecution on criminal charges arising out of the same course of conduct.

In reaching its holding, the Kentucky Supreme court specifically **overruled** *Walden* and *Ingram* and a number of other cases that were predicated on the “same conduct” or “single impulse” tests. The Court stated ‘we now depart from” the “same conduct” and “single impulse” tests and “declare that double jeopardy issues arising out of multiple prosecutions henceforth will be analyzed in accordance with the principles set forth in *Blockburger v. United States*, *supra*, and KRS 505.020. Thus, we return to the *Blockburger* analysis.” *Burge*, at 811. See also, *Commonwealth v. McCombs*, 304 S.W. 3d 676 (Ky. 2009), *Commonwealth v. Bailey*, 970 S.W.2d 818 (Ky. App. 1998), and *Dixon v. Commonwealth*, 263 S.W.3d 583 (Ky. 2008). See also, KRS 403.763 and KRS 456.180. Violation of order of protection constitutes contempt of court and criminal offense.

6. Violation of Protective Order or Interpersonal Violence Order

The new statutes contained within 403.763 and its counterpart in 456.180 specifically state that the violation of the terms or conditions of an order of protection (after service and notice to the Respondent,) shall constitute a contempt of Court AND a criminal offense under these sections. Both sections also state that once a criminal or contempt proceeding has been initiated the other shall not be undertaken. Additionally, these statutes specifically state that nothing contained within them, shall preclude the

²⁷The United States Supreme Court decision in *Dixon*, *supra*, left this issue unclear.

Commonwealth from prosecuting the Respondent for criminal offenses other than the violation of an order of protection.

C. Disposition Of Domestic and Dating Violence Cases

The appropriate disposition of a domestic violence case plays a critical role in alleviating the conditions which would otherwise allow the violence to continue and escalate. The adjudication of criminal charges defuses the perpetrator's minimization, denial and externalization by holding him responsible for the abusive behavior and for changing that behavior to prevent future violence. A disposition which includes clear consequences sends a powerful message to both the victim and the perpetrator that violence will not be tolerated and will be treated as a serious crime.

*When the prosecutor makes a clear statement that the acts of violence were committed against the "peace and dignity of the Commonwealth," it becomes apparent that it is the Commonwealth, not the victim, which decides whether or not to pursue criminal charges. At this point, the perpetrator's control over the victim is severely weakened. As a result, the perpetrator is forced to realize that coercing the victim to request a dismissal or deny the incident no longer provides him an effective mean of avoiding criminal sanctions for his conduct. Further, the imposition of negative consequences on the perpetrator will counteract the belief that violence is an effective and acceptable means of maintaining such power and control. The prosecutor should **always** absorb the responsibility for the charges, relieving the perceived blame the perpetrator attributes to the victim.*

1. "Zero Tolerance"/Pro-Prosecution Policy

A "Zero Tolerance"/Pro-Prosecution Policy should be adopted by all prosecutors' offices within the Commonwealth. This policy recognizes the dynamics of the crime of domestic violence by not allowing the strength or weakness of the abused victim to dictate whether a perpetrator is punished for his criminal conduct.

When a victim appears for case conferencing in a domestic violence case, she may be experiencing the final or "honeymoon" phase of the abusive cycle. In this phase, the perpetrator is generally either no longer attempting to control the relationship by violence or is doing so in implicit, nonphysical

ways. This phase often includes apologies, gifts, promises to attend counseling, and discovery of religion. In the event that these attempts at reconciliation are unsuccessful, he will often resort to threats, crying, begging and even threatening to take away the children or suspend child support.

Recognizing the ploys of manipulation, the prosecutor should not be discouraged if the victim attempts to minimize the perpetrator's accountability for the criminal offense. By allowing the victim to make these prosecutorial decisions, the Commonwealth rewards perpetrators who are successful in the manipulation of their victim. The effect of disposing of a case according to the victim's wishes actually reinforces the perpetrator's conduct, giving him ultimate control over the disposition of his case.

Instead of focusing on the desires of the victim in deciding whether to prosecute domestic violence cases, the prosecutor should focus on the conduct of the perpetrator and make a legal determination regarding the criminality of his conduct. This procedure will alleviate the pressures applied to victims once the perpetrator realizes that the victim does not control the prosecutor's decision-making process. Building a case without the victim, if possible, is preferable. This is a type of approach referred to as "evidence-based prosecution."

Due to the dynamics of domestic violence, victims become reluctant or actually refuse to testify. Often victims may even recant their prior statements made to law enforcement officers, victim service providers or prosecutors. As a result, it may be necessary for the prosecutor to use alternative sources of evidence in the trial of a domestic violence case.

A domestic violence case should not be dismissed solely because the victim has made a request that the charges be dismissed. Likewise, a domestic violence case should not be dismissed due to a heavy caseload, or availability of a civil remedy or settlement. Absent a clear determination by an experienced prosecutor that insufficient evidence exists to go forward, the prosecutor should be committed to prosecuting the domestic violence case to its appropriate conclusion. As always, safety of the and community should be incorporated into all decisions.

2. Pretrial Release and Conditions of Release

The prosecutor shall consider the safety of the victim and the dynamics of domestic violence when recommending a bond in domestic violence cases. Often the pretrial detainment of the defendant allows the victim to explore available resources and options which she could not otherwise explore while under the defendant's influence and pressure. Pre-trial officers are instructed to advise the court if the case involves allegations of domestic violence.

Pretrial release of the defendant should include *specific* non-financial conditions *in writing* and signed by the defendant pursuant to RCr 4.14. These conditions may include an order prohibiting the defendant from contacting the victim and her family. This order should define "no contact" language which prevents the defendant's presence within a specific proximity of the victim's person, family, residence, etc., and should also prevent contact by telephone, mail, messenger, e-mail, etc., as well as prohibit contact by third persons on behalf of the defendant.

Mutual "no-contact" orders should not be requested, and should be opposed if the defense or court suggests such orders. There are several reasons why such orders are inappropriate. The criminal court lacks jurisdiction over the victim, who is not a party to the criminal action. Such orders can also create enforcement problems, such as, if the defendant is harassing the victim but tells the law enforcement officer the victim initiated the contact. While this section relates to pretrial criminal release, see KRS 403.745 (4) and 456.070 (4) for prohibition to mutual no-contact orders in civil protective order cases. Adherence to bond conditions should lie exclusively with the defendant.

- *Victims' Rights to Written Conditions of Release. (KRS 431.064)*
KRS 431.064, relating to pretrial release of a person charged with a criminal offense under KRS Chapter 508 (assaults), KRS Chapter 510 (sex offenses) or the criminal offense of violating an Order of Protection under 403.720 (DVO) and 456.010 (IPO), sets out specific conditions of release which may be imposed, provides for a written order of conditions, and mandates a **free certified copy** of the conditions, upon request, be provided to the victim. The court and the prosecutor should insure that the victim is informed of her right to a certified copy of release conditions and should encourage her to request a copy. Such simple advice could later save the victim's life. Should an act violating a condition occur during the hours when the

office of the clerk holding the bond papers is closed or the responding law enforcement officer is unable to verify the conditions through pretrial services or LINK, the victim's certified copy of the conditions of release will be sufficient to support an arrest? Additionally, violation of any condition of an order issued under KRS 431 is a Class A misdemeanor.

- *Arrest for Violation of Condition of Release. (KRS 431.005)*

If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with KRS 431.064 and verifies that the alleged violator has notice of the conditions, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

- *Victim's Right to Verbal Notice of Release: Victim Information and Notification Everyday (V.I.N.E.). (KRS 196.280)*

The victim should be advised of his or her right to register with the V.I.N.E. system to be notified upon the release of the defendant from incarceration.

3. Case Conferencing Among Agencies

The prosecutor should organize case conferencing to encourage review and exchange of information in domestic violence cases with law enforcement officials, victim advocates, protective service workers, mental health treatment providers, coroners and victims. Such a multidisciplinary approach is showing success in the area of child sexual abuse. While an organized meeting with all these agency representatives may not be feasible, a procedure to insure each is providing necessary information should be established within each jurisdiction.

After consultation with the victim and the various agency representatives, the prosecutor will determine whether the case should proceed to trial, be plea bargained or otherwise resolved. The prosecutor is mandated under KRS 421.500(6) to communicate these decisions and any position regarding probation of the offender to the victim.

Continued trauma-informed and victim-centered communication with the victim increases rapport with and participation by the victim.

Case conferencing can be particularly effective in complex or "revolving door" types of domestic violence cases where there is a history within the system.

4. Conflict of Interest

The prosecutor should evaluate each domestic violence case, as any other case would be evaluated, for any potential conflict of interest or the appearance of a conflict of interest. If the prosecutor has personal ties or has represented the perpetrator in any civil action or other legal action through the private practice of law, that prosecutor should not be involved in screening or prosecution of that case. The Kentucky Bar Association has recommended that the prosecutor also turn over the private action to another attorney when these circumstances exist.²⁸ And KBA Ethics Opinion E-415 specifically states that a part-time prosecutor may not represent a respondent in a matter involving a civil domestic violence order. Additionally, the prosecutor should not attempt to influence or affect the outcome of the domestic violence case in the event a prosecutor in that office subsequently handles the criminal case.

5. Mediation In Domestic and Dating Violence Cases

Several jurisdictions have a formal mediation program in which citizen warrant charges may be referred to a non-judicial mediator to attempt to resolve the parties' differences without the involvement of the court system. ***The prosecutor should not agree to mediate domestic violence cases*** prior to charging (or after charging, for that matter), because the perpetrator's appearance in the judicial process is an important step toward recognition and reform of his criminal behavior. Further, mediation of domestic violence cases may foster archaic attitudes that regard violence against women as family matters not worthy of the judicial system. The generic definition of "mediation" is an attempt to resolve a legal dispute through a third party neutral and come to a mutual agreement.²⁹ This makes mediation inappropriate for cases involving IPV because mediation presupposes equal power between the parties. In dating and domestic violence relationships, the abuser enjoys a power imbalance.

KRS 403.730 and KRS 456.040 provide that if the court finds that there is domestic violence and abuse, the court is not allowed to order mediation unless the victim requests it, and the court finds that the request is voluntary

²⁸Attorney General's Task Force on Domestic Violence Crime, October, 1991.

²⁹ See Legal Dictionary.com, <https://dictionary.law.com/Default.aspx?selected=1233#:~:text=the%20attempt%20to%20settle%20a,agree%20on%20a%20fair%20result.&text=However%2C%20mediation%20does%20not%20always%20result%20in%20a%20settlement.> (last visited June 30, 2020).

and uncoerced, and that mediation is a viable alternative to or adjunct to the issuance of a protective order.

KRS 403.745 and KRS 456.070 (3) provide that a court which enters an order of protection may direct either or both parties to receive counseling but **shall not order** or refer the parties to participate in **mediation, or conciliation, or counseling** prior to or as a condition of issuing a protective Order and for resolution of the issues alleged in the petition filed pursuant to KRS 403.750 to 403.785 or 456.010 through 456.180.

6. Alternative Sentencing Policy

In certain cases, probation or formal court-approved diversion may be appropriate. Alternative sentencing should never be considered merely because of the relationship of the perpetrator to the victim. Before agreeing to alternative sentencing, the prosecutor should fully consider the dynamics of domestic violence and the need to hold the batterer criminally accountable.

When the injuries are severe, the perpetrator has a prior conviction for a violent offense, children were present during the violence, the victim was pregnant or the victim appears to remain in danger, alternative sentencing is not appropriate. Restitution and assessment for court-ordered counseling for the perpetrator by an approved provider should **always** be a condition of an alternative sentence.

KRS 533.260 & 533.262 requires that pretrial diversion programs must be authorized by the Supreme Court. The statutes set out the elements each program must contain, the duties of the Commonwealth's Attorney when considering an application for pretrial diversion, requirements for payment of restitution, consequences of failure to complete the provision of a diversion agreement and the effects of successful completion of the diversion agreement. See KRS 533.015 - 533.262

D. Mandatory Domestic Violence Training for Criminal Justice Professionals

The law requires key professionals, including spouse abuse center staff, social workers, judges, prosecutors, victim advocates, medical professionals and court clerks to receive training on domestic violence. The Justice Cabinet, the Attorney General's Office, the Administrative Office of the Courts, and the Cabinet for Families and Children are required by the law to develop appropriate training curricula for the professions under their auspices.

1. Prosecutors

KRS 15.718. Before handling domestic violence cases, prosecutors should receive specialized training in working with domestic violence victims and prosecuting these cases. KRS 15.718 requires the Office of the Attorney General to provide initial training courses and, at least once every two (2) years, continuing education courses for Commonwealth's attorneys and county attorneys and their staffs concerning:

(a) The dynamics of domestic violence, child physical and sexual abuse, rape, effects of crime on adult and child victims, legal remedies for protection, lethality and risk issues, profiles of offenders, model protocols for addressing domestic violence, child abuse, rape, available community resources and victims' services, and reporting requirements; and

(b) The appropriate response to victims of human trafficking, including but not limited to screening for victims of human trafficking, federal and state legislation on human trafficking, appropriate services and referrals for victims of human trafficking, working with interpreters, and agency protocol for handling child trafficking cases.

- The training shall be developed in consultation with prosecutors, victim's services, victim advocacy, and mental health professionals with an expertise in domestic violence, child abuse, human trafficking, and rape.
- Each Commonwealth's Attorney, assistant Commonwealth's Attorney, county attorney, and assistant county attorney shall successfully complete the training.

2. Victim Advocates

KRS 421.570. This law addresses training requirements for all victim advocates. For the purposes of the statute and KRS 421.575, "victim advocate" means an individual at least eighteen (18) years of age and of good moral character, who is employed by, or serves as a volunteer for, a public or private agency, organization, or official to counsel and assist crime victims as defined in KRS 421.500 (The Crime Victims Bill of Rights), and includes a victim advocate employed by a Commonwealth's Attorney pursuant to KRS 15.760 and a victim advocate employed by a County Attorney pursuant to KRS 69.350.

KRS 421.570(2) provides that each victim advocate shall complete training which shall include information concerning the difference between advocacy and the practice of law, and the appropriate intervention with crime victims, including victims of domestic violence, child physical and sexual abuse, human trafficking and rape. Victim advocate's employed by a Commonwealth's or County Attorney must also receive training related to

the appropriate intervention with victims of elder abuse, neglect or exploitation or other crimes against the elderly. Commonwealth's Attorneys and County Attorneys must insure that victim advocates employed by them complete training related to appropriate intervention with crime victims, specifically including victims of domestic violence. (KRS 15.760, 69.350).

3. Law Enforcement

KRS 15.334(3) requires the Justice and Public Safety Cabinet to provide training on the subjects of domestic violence and abuse. All certified peace officers must complete the training at least once every two years.

KRS 15.334(2) requires the Kentucky Law Enforcement Council to establish, by January 1, 2017, a forty (40) hour sexual assault investigation training course. By January 1, 2019, agencies shall have one (1) or more officers trained in this curriculum, as follows:

- Agencies with five (5) or fewer officers shall have at least one (1) officer trained in sexual assault investigation;
- Agencies with more than five (5) officers but fewer than thirty (30) officers shall have at least two (2) officers trained in sexual assault investigation; and
- Agencies with thirty (30) or more officers shall have at least four (4) officers trained in sexual assault investigation.

E. Innovative Ideas In Response To Domestic Violence

Interagency/multidisciplinary approaches to prevention, investigation, and prosecution of domestic violence have proved to be effective in many communities. These approaches include participation on domestic violence coordinating councils, multidisciplinary case review teams, domestic violence fatality review teams, domestic violence high risk response teams, sexual assault response teams and sexual assault interagency councils. Tools to assist you in implementing innovative programs such as the Lethality Assessment Program and for working with underserved populations such as individuals with disabilities or who are non- or English speaking are contained in the appendix to this manual.

CHAPTER 2: *Domestic Violence and Abuse Act*

A. Statutory Provisions

KRS 403.715 through 403.785 sets forth the law as it relates to civil aspects of domestic violence. *(The following statutes became effective January 1, 2016. For Orders in effect prior to January 1, 2016, please refer to the older statutory provisions.)*

1. Legislative Intent of The Act (KRS 403.715)

KRS 403.715 to 403.785 shall be interpreted to:

- Allow victims to obtain effective, short-term protection against further wrongful conduct in order that their lives may be as secure and as uninterrupted as possible;
- Expand the ability of law enforcement officers to effectively respond to further wrongful conduct so as to prevent future incidents and to provide assistance to the victims;
- Provide peace officers with the authority to immediately apprehend and charge for violation of an order of protection any person whom the officer has probable cause to believe has violated an order of protection and to provide courts with the authority to conduct contempt of court proceedings for these violations;
- Provide for the collection of data concerning incidents of domestic violence and abuse in order to develop a comprehensive analysis of the numbers and causes of such incidents; and
- Supplement and not repeal or supplant any duties, responsibilities, services, or penalties under KRS Chapters 209, 209A, and 620.

2. Definitions for The Act (KRS 403.720)

- “Domestic violence and abuse” means physical injury, serious physical injury, stalking, sexual abuse, strangulation, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple;
- “Family member” means a spouse, including a former spouse, a grandparent, a grandchild, a parent, a child, a stepchild, or any other

person living in the same household as a child if the child is the alleged victim;

- “Foreign protective order” means any judgment, decree, or order of protection which is entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265 that was issued on the basis of domestic violence and abuse;
- “Global positioning monitoring system” means a system that electronically determines a person's location through a device worn by the person which does not invade his or her bodily integrity and which transmits the person's latitude and longitude data to a monitoring entity;
- “Member of an unmarried couple” means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together;
- “Order of protection” means an emergency protective order or a domestic violence order and includes a foreign protective order;
- “Strangulation” refers to conduct prohibited by [KRS 508.170](#) and [508.175](#); and
- “Substantial violation” means criminal conduct which involves actual or threatened harm to the person, family, or property of an individual protected by an order of protection.

3. Additional Definitions

- “*Physical Injury*” means substantial physical pain or any impairment of physical condition. KRS 500.080(13).
- “*Emergency Protective Orders*” (“EPO”) means an ex parte court order (an order issued at the request of one party without a hearing) issued under the provisions of KRS 403.730 against a family member or a member of an unmarried couple who have been determined to present an immediate and present danger and which is valid for up to 14 days (the date of expiration should appear on the order).
- “*Domestic Violence Order*” (“DVO”) means a court order issued under the provisions of KRS 403.740 following a hearing against a family member or a member of an unmarried couple where the court has found violence has occurred and is likely to occur again. In Kentucky, a “DVO” is valid for up to three years and may be reissued upon expiration for subsequent periods of up to three years each (the date of expiration should appear on the order).

- “*Mutual Protection Order*” is an order of protection against both the Petitioner and Respondent and may only be issued if both parties have filed separate petitions and the orders are written with sufficient specificity to allow any peace officer to identify which party has violated the order. KRS 403.745(4). KRS 456.070(4). See *Manning v. Willett*, 221 S.W.3d 394 (Ky. App. 2007).

NOTE: Mutual Protection Orders are discouraged by IPV professionals in most cases. Mutuality perpetuates the mistaken belief that *both* parties are to blame in abusive relationships, when in reality, the controlling, abusive partner is the person who needs to cease his abusive behavior.

4. Identifying Victims of Domestic and Dating Violence and Abuse and Making Referrals for Voluntary Services

Note: The KRS 209A requirement for reporting Spouse Abuse was **repealed** by 17 HB 309. Reporting may be required under KRS Chapter 209 in some cases.

Purpose.

- To identify victims of domestic violence and abuse and dating violence and abuse, to link those victims to services and to provide protective or therapeutic services for those who choose to accept them.
- A victim of domestic or dating violence or abuse who has a mental or physical disability or who cannot carry out the activities of daily living or protect himself or herself without the assistance of others may be served under the provisions of KRS Chapter 209.

Definitions.

- Cabinet - means the Cabinet for Health and Family Services.
- Dating Violence and Abuse - has the same meaning as in KRS 456.010.
- Domestic Violence and Abuse - has the same meaning as in KRS 403.720.
- Law Enforcement Officer - means a member of a lawfully organized police unit or police force of county, city, or metropolitan government who is responsible for the detection of crime and the enforcement of the general criminal laws of the state, as well as a sheriff, sworn deputy sheriff, campus police officer, law enforcement support personnel, public airport authority security officer, other public and federal peace officer

responsible for law enforcement, special local peace officer appointed pursuant to KRS 61.360, school resource officer, public school district security officer, and any other enforcement officer as defined by law.

- Professional – means a physician, osteopathic physician, coroner, medical examiner, medical resident, medical intern, chiropractor, nurse, dentist, optometrist, emergency medical technician, paramedic, licensed mental health professional, therapist, cabinet employee, child-care personnel, teacher, school personnel, ordained minister or the denominational equivalent, victim advocate or any organization or agency employing any of these professionals.
- Victim – means an individual who is or has been abused by a spouse or former spouse or an intimate partner who meets the definition of a member of an unmarried couple as defined in KRS 403.720, or a member of a dating relationship as defined in KRS 456.010.
- Victim Advocate – has the same meaning as in KRS 421.570.

Reporting – at the request of the victim.

- Upon the request of a victim, a professional shall report an act of domestic violence and abuse or dating violence and abuse to a law enforcement officer.
- A professional who makes a report under Chapter 209A shall discuss the report with the victim prior to contacting a law enforcement officer.

Reporting – suspected domestic or dating violence or abuse related death.

- A professional **shall report** to a law enforcement officer his or her belief that the death of a victim with whom he or she has had a professional interaction is related to domestic violence and abuse or dating violence and abuse.
- Nothing in KRS Chapter 209A shall relieve a professional of the duty pursuant to KRS 620.030 to report any known or suspected abuse, neglect, or dependency of a child.
- Nothing in KRS Chapter 209A shall relieve a professional of the duty pursuant to KRS 209.030 to report to the cabinet any known or suspected abuse, neglect, or exploitation of a person eighteen (18) years of age or older who because of mental or physical dysfunction is unable to manage his or her own resources, carry out the activity of daily living, or protect himself or herself from neglect, exploitation or a hazardous or abusive situation without assistance from others.

Law Enforcement Response to Report.

- If a law enforcement officer receives a report of domestic violence and abuse or dating violence and abuse, the officer shall use all reasonable means to provide assistance as required under KRS 403.785 and 456.090.
- A law enforcement officer who responds to a report of domestic violence and abuse or dating violence and abuse **shall use the JC-3 form**, or its equivalent replacement, as provided by the Justice and Public Safety Cabinet to document any information or injuries related to the domestic violence and abuse or dating violence and abuse.
- A completed JC-3 form, or its equivalent replacement, shall be kept in the records of the law enforcement officer's agency of employment.
- If the JC-3 form, or its equivalent replacement, includes information that only relates to a victim as defined in Section 4 of this Act, (Section 4 defines victim as individuals meeting the definition of a member of an unmarried couple as defined in KRS 403.720 or a member of a dating relationship as defined in KRS 456.010), the form shall not be forwarded to the cabinet.
- If the JC-3 form, or its equivalent replacement k includes information on known or suspected child abuse or neglect or the abuse or neglect of an elderly or disabled adult, the form shall be forwarded to the cabinet.

Duty of Professionals to Provide Educational Materials.

If a professional has reasonable cause to believe that a victim with whom he or she has had a professional interaction has experienced domestic violence and abuse or dating violence and abuse, the professional shall provide the victim with educational materials related to domestic violence and abuse or dating violence and abuse including

- information about how he or she may access regional domestic violence programs or rape crisis centers; and
- information about how to access protective orders.

The cabinet designated primary service provider for domestic violence shelter, crisis, and advocacy services in the district in which the provider is located shall make the educational materials available on its Web site or in print form for professional to provide to possible victims of domestic violence and abuse or dating violence and abuse.

NOTE: Professionals, including prosecutors and law enforcement, should never direct a victim to obtain a protection order without understanding all material facts of the case and determination of future lethality. Preferably,

the victim should be referred to a victim service provider or experienced and DV trained attorney to assess safety and determine on a case-by-case basis if a protection order is appropriate.

Privilege.

Neither the psychotherapist–patient privilege nor the husband-wife privilege shall be a ground for excluding evidence regarding the domestic violence and abuse or dating violence and abuse of an adult or the cause thereof in any judicial proceeding resulting from a report pursuant to KRS Chapter 209A.

Immunity from Liability.

Any person acting upon reasonable cause in complying with the provisions of KRS Chapter 209A shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed and shall have the same immunity with respect to participation in any judicial proceeding resulting there from.

Penalty for Failure to Report.

A professional knowingly or wantonly violating the provisions of KRS Chapter 209A shall be guilty of a Class B misdemeanor and penalized in accordance with KRS 532.090. Each violation shall constitute a separate offense.

B. Filing A Domestic Violence Petition (EPO)

Domestic violence proceedings allow all victims of domestic violence to obtain short-term protection against further violence through court protective orders and expanded law enforcement authority to intervene and assist victims. **No** filing fee or court cost shall be assessed upon the victim for either the filing of domestic violence petition or the service of the petition upon the perpetrator. KRS 403.730 and 403.745(2).

The petition is a request for a hearing on the issue of the alleged abuse. A victim/petitioner who feels in immediate danger may, in the petition, ask the judge to issue an emergency protective order to control the perpetrator/respondent until the hearing is held.

Note: An EPO is the emergency, *ex parte* order that can be granted if the statutory elements exist. The court may also deny the issuance of an EPO, but still set the case for a DVO hearing. This simply means the reviewing

judge did not identify a threat of immediate harm, but believed that a claim for domestic violence was stated in the complaint (*i.e.* petition).

A legal proceeding stated by this petition is a *civil proceeding, not a criminal one*.

A protective order is *not a substitute for a criminal prosecution or a divorce proceeding*. Criminal prosecution should not be declined solely because the victim has obtained an order of protection. There are many benefits and protections afforded to a victim from a protective order that are not available in a criminal prosecution alone³⁰.

1. Who Can File A Domestic Violence Petition?

A petition for an Order of Protection may be filed by

- A victim³¹ of domestic violence and abuse; or
- An adult on behalf of a victim who is a minor otherwise qualifying for relief under KRS 403.725.

A “family member” includes a spouse, including a former spouse, a grandparent, a grandchild, a parent, a child, a stepchild, or any other person living in the same household as a child if the child is the alleged victim.

A “member of an unmarried couple” mean each member of an unmarried couple which allegedly has a child in common, any children of the couple, or a member of an unmarried couple who are living together or have formerly lived together.

All the above listed persons may file and receive protection through issuance of an EPO or DVO in District Court, notwithstanding the existence of or intent to file an action in the Circuit Court by either party. However, when an EPO is sought in District or Circuit Court the person making the

³⁰ These benefits include: protective orders are available 24 hours a day, seven (7) days a week; protective orders are entered into the LINK protective order file and are available to law enforcement officers 24 hours a day; intentionally violating the provisions of a protective order with which the respondent has been served or has been given notice is a Class A misdemeanor; arrest is mandatory when the officer has probable cause to believe that a protective order has been violated and the respondent has been served with or given notice of the order; other states must enforce Kentucky protective orders which meet the requirements of 18 U.S.C. sec. 2265; and state and federal laws place restrictions on the ability of persons, against whom a qualifying protective order has been issued, to ship, transport, or possess weapons and to have a license to carry a concealed deadly weapon.

³¹ It is worth noting that “victim” does not specify the “victim” must be an adult. Presumably, the “victim” may be a juvenile.

petition shall make known to the court of any custody or divorce actions, involving both the petitioner and the respondent, that are pending in any Circuit Court in the Commonwealth and include the name of the Court where the action is filed (KRS 403.750 (2) (a)).

Note: A person's right to apply for relief shall not be affected by that person leaving his or her residence to avoid domestic violence and abuse. KRS 403.745(8).

2. What Behavior Constitutes Domestic Violence?

"Domestic violence and abuse" means physical injury, serious physical injury, stalking, sexual abuse, strangulation, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, strangulation, or assault between family members or members of an unmarried couple. KRS 403.720.

3. What Is The Difference Between an EPO and a DVO?

EPO (Emergency Protective Order). Pursuant to KRS 403.730, an EPO means an ex parte court order issued against a family member or a member of an unmarried couple when a judge determines that the allegations contained in the petition indicates the presence of an immediate and present danger of domestic violence and abuse. Typically, no court hearing occurs with a EPO. A judge can opt to not issue an EPO, but still set the matter for a DVO hearing at a later point in time.

DVO (Domestic Violence Order). Pursuant to KRS 403.740, a DVO means a court order issued following a hearing against a family member or a member of an unmarried couple where a judge has found by a preponderance of the evidence that acts of domestic violence and abuse has occurred and may occur again. In other words, after a full due process hearing, this is the resulting order after hearing the evidence.

Note: In Kentucky, a domestic violence order shall be effective for a period of time fixed by the court, not to exceed three (3) years, and may be reissued upon expiration for subsequent periods of up to three (3) years each. The fact that an order has not been violated since its issuance may be considered by a court in hearing a request for a reissuance of the order. See *Buddenberg v. Buddenberg*, 304 S.W. 3d 717 (Ky.App., 2010). The date of expiration should appear on the Order. (KRS 403.740 (3)).

Note: KRS 403.735 (1) provides that, prior to or at a hearing on a petition for an order of protection, the court may obtain the respondent's Kentucky criminal and protective order history and utilize that information to assess what relief and which sanctions may protect against danger to the petitioner or other person for whom protection is being sought, with the information so obtained being provided to the parties in accordance with the Rules of Civil Procedure. Also, if the petitioner or respondent is a minor, the court shall inquire whether the parties attend school in the same school system to assist the court in imposing conditions in the order that have the least disruption in the administration of education to the parties while providing appropriate protection to the petitioner.

4. Where, When and How Is An Order of Protection To Be Filed?

Where is the petition filed?

KRS 403.725(2). The petition may be filed in the victim's county of residence or a county where the victim has fled to escape domestic violence and abuse.

KRS 403.725(6) (a). Jurisdiction over petitions filed under this chapter shall be concurrent between the District court and Circuit Court and a petition may be filed by a petitioner in either court, except that a petition shall be filed in a family court if one has been established in the county where petition is filed.

KRS 403.725(8). If the judge of a court in which there is a pending request for modification or enforcement of an existing order of protection is unavailable or unable to act within a reasonable time, the proceedings may be conducted by any judge of the county in accordance with court rules.

Note: All Petitions requested, completed, and signed by persons seeking protection under this chapter shall be accepted and filed with the Court.
KRS 403.725 (5).

When may a petition be filed?

All Kentucky courts are required to provide twenty-four (24) hour access to emergency protective orders.

- KRS 403.725(6) (b). The Court of Justice shall provide a protocol for twenty-four (24) hour access to orders of protection in each county

with any protocol, whether statewide or local, being subject to Supreme Court review and approval of the initial protocol and any subsequent amendments. This protocol may allow for petitions to be filed in or transferred to a court other than those specified in paragraph (a) of this subsection.

- KRS 403.725(6) (c). The Court of Justice may authorize by rule that petitions in a specific county be filed in accordance with a supplemental jurisdictional protocol adopted for that county. This protocol may provide for petitions to be filed in or transferred to a court other than those specified in paragraph (a) of this subsection.

Note: Denial of EPO. If an EPO is not issued, the court shall note on the petition, for the record, any action taken or denied and the reason for it. KRS 403.730 (2) (b).

How is a petition filed?

The petition shall be filed on forms prescribed by the Administrative Office of the Courts and provided to the person seeking relief by the circuit clerk or by another individual specifically authorized by the court to provide and verify petitions in emergency situations, such as law enforcement officers, and County or Commonwealth's attorneys.

All petitions requested, completed and signed by persons seeking protection under the Act shall be accepted and filed with the court. KRS 403.725 (5).

Additionally, upon proper filing of a motion, either party may seek to amend an order of protection. KRS 403.745 (5).

Note: KRS 403.745 (2). No costs, fees, or bond shall be assessed against or required of a petitioner for any filing, hearing, service, or order authorized by or required to implement KRS 403.715 to 403.785.

Note: Mutual Protective Orders. A court may issue mutual protective orders only if: 1.) both parties have filed separate petitions and 2.) the orders are written with sufficient specificity to allow any peace officer to identify which party has violated the order. (if there is probable cause to believe a violation of the order has occurred.) KRS 403.745(4). KRS 456.070(4). See *Manning v. Willett*, 221 S.W.3d 394 (Ky. App. 2007).

When does the protective order become effective and for how long will the order be in effect?

- An emergency protective order and a domestic violence order shall become **effective and binding on the respondent when the respondent is given notice** of the existence and terms of the order by a peace officer or the court or upon personal service of the order, whichever is earlier. A peace officer or court giving notice of an unserved order shall make all reasonable efforts to arrange for the order's personal service upon the respondent. Once effective, a peace officer or the court may enforce the order's terms and act immediately upon their violation. KRS 403.745 (1).
- An EPO (Emergency Protective Order) **shall be effective for up to fourteen (14) days** from the day of issuance and may be reissued if the respondent is not present at the hearing and has not served. If the respondent is not served with the summons within 72 hours of the hearing the court shall direct the issuance of a new summons for a hearing not more than fourteen (14) days in the future. **The court may continue to issue a new summons with a new hearing date every fourteen days for up to six (6) months if not served upon the perpetrator/respondent.** At the end of six (6) months without service the order will be rescinded without prejudice. The petitioner may, before the expiration of the order, file a petition for a new order. A new six (6) month process will begin at this time. KRS 403.735 (2) (b). See *Daugherty v. Telek*, 366 S. W. 3d 463 (Ky. 2012)
- A DVO (Domestic Violence Order) shall be effective for a period of time as fixed by the court not to exceed three (3) years and may be reissued upon expiration for subsequent periods of up to three (3) years each. See *Wooldridge v. Zimmerer*, 311 S.W.3d 254 (Ky. App. 2010); *Kessler v. Switzer*, 289 S.W.3d 228 (Ky. App. 2009). KRS 403.740 (4).

Note: The fact that an Order has not been violated since its issuance may be considered by a court in hearing a request for a reissuance of the order. KRS 403.740 (4)

What behavior may be prohibited / What relief may be ordered?

- *Emergency Protective Order (EPO) KRS 403.730:* If, upon review of the petition as provided for in KRS 403.730 (2) (a) the court

determines that the allegations contained therein indicate the presence of an immediate and present danger of domestic violence and abuse, the court shall issue, upon proper motion, ex parte, an emergency protective order which authorizes the use of relief options set out in KRS 403.740, other than awarding temporary support or counseling.

The EPO may not order or refer the parties to mediation unless requested by the petitioner, and the court finds that the petitioner's request is voluntary and not the result of coercion and mediation is a realistic and viable alternative to or adjunct to the issuance of an order sought by the petitioner. KRS 403.730.

- *Domestic Violence Order (DVO)* KRS 403.740: Following the hearing provided for under KRS 403.730, if the court, finds from a preponderance of the evidence that an act or acts of domestic violence and abuse have occurred and may again occur, may:
 - (a) Restrain the adverse party from:
 - Committing further acts of domestic violence and abuse;
 - Any unauthorized contact or communication with the petitioner or other person specified by the court;
 - Approaching the petitioner or other person specified by the court within a distance specified in the order, not to exceed five hundred (500) feet;
 - Going to or within a specified distance of a specifically described residence, school, or place of employment area where such a place is located; and
 - Disposing of or damaging any property of the parties;
 - (b) Direct or prohibit any other actions that the court believes will be of assistance in eliminating future acts of domestic violence and abuse cases, except that the court shall not order the petitioner to take any affirmative action;
 - (c) Direct that either or both of the parties receive counseling services available in the community in domestic violence and abuse cases; and
 - (d) Additionally, if applicable:
 - Direct the adverse party to vacate a residence shared by the parties to the action;
 - Utilize the criteria set forth in KRS 403.270, 403.320, and 403.822, to grant temporary custody; and

- Utilizing the criteria set forth in KRS 403.211, 403.212, and 403.213, to award temporary child support. KRS 403.740.

Note: A court may issue *mutual protective orders* **only** if separate petitions have been filed by both parties and the orders are written with sufficient specificity to allow any peace officer to identify which party has violated the order. KRS 403.745(4).

Note: Location Restrictions (KRS 403.740(2))

When imposing a location restriction described in KRS 403.740(1) (a) (4) the court shall:

- Afford the petitioner and respondent, if present, an opportunity to testify on the issue of the locations and areas from which the respondent should or should not be excluded;
- Only impose a location restriction where there is a specific, demonstrable danger to the petitioner or other person protected by the order;
- Specifically describe in the order the locations or areas prohibited to the respondent; and
- Consider structuring a restriction so as to allow the respondent transit through an area if the respondent does not interrupt his or her travel to harass, harm or attempt to harass or harm the petitioner.

Note: When temporary child support is granted, the court shall enter an order detailing how the child support is to be paid and collected. The child support ordered may be enforced utilizing the same procedures as any other child support order. KRS 403.740(3).

Note: A court shall not require mediation, conciliation, or counseling prior to or as a condition of issuing an order of protection. KRS 403.745(3).

5. Consequences of Violating an EPO, DVO, or a Foreign Protective Order. (KRS 403.763)

If a respondent violates the terms of an EPO, DVO or foreign protective order either one of two proceedings may be brought against him: a criminal charge ("violation of a protective order") or a proceeding for contempt of court. KRS 403.763.

State criminal charge.

Violation of a protective order. A person commits this crime, which is a Class A misdemeanor, when he intentionally violates the provisions of an Order of Protection with which he has been served or has been given notice. KRS 403.763. See *Stinson v. Stinson*, 381 S.W.3d 333 (Ky. App. 2012). A Class A misdemeanor carries a penalty of up to 12 months in jail and a \$500 fine.

Court proceedings for a criminal violation of an order of protection shall follow the rules of venue applicable to criminal cases generally. KRS 403.763(2) (b).

Contempt of court proceeding.

Violating the provisions of an EPO, DVO or foreign protective order shows contempt for an order of the court, and a proceeding for contempt of court may be brought.

Court proceedings for contempt of court for violation of an order of protection shall be held in the county where the order was issued or filed. KRS 403.763(2) (a).

Federal criminal charge.

The Violence Against Women Act created federal offenses in cases where an abuser crosses state lines to violate a protection order or injure, harass or intimidate a spouse or intimate partner. These federal remedies are important tools in cases when movement across state lines makes state prosecution difficult and where state law penalties may not be tough enough. They also offer important benefits to victims, including strengthened restitution provisions and an opportunity to address the court concerning the danger posed by a defendant prior to any pre-trial release.

Additionally, it is a federal crime to possess a firearm if an individual has a protection order against him. 18 U.S.C. § 922(g)(8).

C. Processing of Domestic Violence Civil Complaints**1. Duties Of The Judge**

Reviewing the petition (KRS 403.730)

The judge reviews the petition immediately upon its filing, and, if the petition does describe a domestic violence and abuse situation, the judge proceeds as follows.

Acting on the petition

- Petitioner not in imminent danger (KRS 403.730(1)(a))

The court reviews the petition seeking an order of protection immediately upon its filing.

If the review indicates that *domestic violence and abuse exists*, the court shall summons the parties to an evidentiary hearing not more than fourteen (14) days in the future.

If the review indicates that such a *basis does not exist*, the court may consider an amended petition or dismiss the petition without prejudice.

- Petitioner in danger (KRS 403.730(2)(a))

If the Judge decides the Petition shows an immediate and present danger of domestic violence and abuse, the court shall, upon proper motion, issue ex parte an emergency protective order. The order may contain some, all, or a combination of the protections that are set forth in KRS 403.740. (other than awarding temporary support and counseling). This Order expires upon the conclusion of the evidentiary hearing, unless extended or withdrawn by subsequent order of the court.

A copy of the EPO, as well as a copy of the order fixing the date of the hearing, a copy of the petition are served on the respondent (KRS 403.730(1) (b)).

- A court may *issue mutual protective orders* **only** if separate petitions have been filed by both parties and the orders are written with sufficient specificity to allow any peace officer to identify which party has violated the order. KRS 403.745(4).

Obtaining information and review of documents (KRS 403.735)

Prior to a hearing on the Order of Protection the Court may obtain the Respondent's Kentucky criminal history and protective order history. The court shall review and assess which sanctions may protect against danger to the petitioner or a family member or member of an unmarried couple for whom protection is being sought. The court shall provide a copy of the information to petitioner and respondent or to their counsel. KRS 403.741 (3).

Referral to County Attorney (KRS 403.745(7) (b))

In cases where criminal conduct is alleged, a court may suggest that a petitioner voluntarily contact the county attorney. A court may not withhold or delay relief if the petitioner elects to not contact the county attorney.

Conducting the hearing (KRS 403.740).

At the hearing, the judge hears evidence from both the petitioner and the respondent. If a preponderance of the evidence shows that domestic violence and abuse (1) has occurred, and (2) may again occur, the judge acts to correct the situation by issuing a domestic violence order (DVO).

A. If an Order Is Issued

The Domestic Violence Order (DVO) may contain some or all of the following restrictions upon the respondent:

1. Committing further acts of domestic violence and abuse.
2. Limiting the contact and scope of contact between the parties.
3. Setting a distance limit to which the Respondent may come around in the proximity of the Petitioner (not to exceed 500 feet).
4. Go to or within a specified distance of a specifically described residence school, or place of employment, or other area.

The judge may also invoke other alternatives. These included any or all of the following:

- Directing or prohibiting any actions to which the Court believes will be of assistance in eliminating future acts of Domestic Violence or abuse. (The court cannot however require the petitioner (victim) to any affirmative duty).
- Directing one or both of the parties to counseling.
- Additional remedies (if applicable) including:
 - Directing the respondent to vacate the residence.

- Granting temporary child custody and child support.

DVOs are in effect for up to three years and may be reissued. Either party may seek to amend a DVO.

Note: KRS 403.745 (6) specifically provides that any testimony shall not be admissible in any criminal proceeding involving the same parties, except for purposes of impeachment.

Note: it is against best practice to order the petitioner and respondent to couples counseling.

B. If no order is issued KRS 403.745 (10)

The court in which the petition was heard may for good cause shown order the expungement of the records of the case if:

1. Six (6) months have elapsed since the case was dismissed; and
2. During the six (6) months preceding the expungement request, the respondent has not been bound by an order of protection issued for the protection of any person, including an order of protection as defined in KRS 456.010.

C. 403.761 Amendment of domestic violence order to require participation in global positioning monitoring system.

- Substantial violation defined.
“Substantial violation” means criminal conduct which involves actual or threatened harm to the person, family, or property of an individual protected by an order of protection. KRS 403.720(7).
- Gathering Records
A Court must review an updated history of the Respondent’s Kentucky criminal and protective history before it can amend an order of protection to require respondent’s participation in a GPS monitoring system. KRS 403.761 (1) (b).
- Amending the Order
 1. Upon proper filing of a motion, either party may seek to amend an Order of protection. KRS 403.745 (5).
 2. Upon a petitioner's request and after an evidentiary hearing, a court may amend a domestic violence order to

require a respondent to participate in a global positioning monitoring system if:

- The respondent has committed a substantial violation of a previously entered domestic violence order;
- The court has reviewed an updated history of the respondent's Kentucky criminal and protective order history; and
- The court makes a factual determination that the use of a global positioning monitoring system would increase the petitioner's safety. KRS 403.761 (1).

3. If the Judge of a court in which there is a pending request for modification or enforcement of an existing order of protection is unavailable or unable to act within a reasonable time, the proceedings may be conducted by any Judge of the county in accordance with Court rules. KRS 403.725 (8).

- GPS Monitoring System Order (KRS 403.761 (2))

An order requiring participation in a global positioning monitoring system shall:

- Require the respondent to pay the cost of participation up to the respondent's ability to pay, with the system operator bearing any uncovered costs for indigent respondents;
- State with specificity the locations or areas where the respondent is prohibited from being located or persons with whom the respondent shall have no contact;
- Include the date that the order expires, which shall be no longer than the expiration date of the domestic violence order, although participation may be extended if the underlying order is extended;
- Require the entity that operates the monitoring system to immediately notify the petitioner, the local law enforcement agency named in the order, and the court if a respondent violates the order; and
- Include any other information as the court deems appropriate.

- Payment for Monitoring Program

KRS 403.761 (4) (a) The Supreme Court may establish by rule a sliding scale of payment responsibility for indigent

defendants for use in establishing required payments under KRS 403.761 (2).

- **Violations and Penalties**

A respondent who fails to wear, removes, tampers with, or destroys a global positioning monitoring system device in contravention of an order entered under this section shall be guilty of a Class D felony. KRS 403.761 (6).

- **Termination of the Monitoring Program**

An Order requiring participation shall include the date that the order expires, which shall be no longer than the underlying protective order, although the participation may be extended if the underlying order is extended. KRS 403.761 (2) (c).

2. Duties Of The Court Clerk

Deleting petitioner's address from documents to be served on the respondent (KRS 403.745(9))

The court clerk upon order of the Court, shall delete the address of the petitioner and of any minor children from any documents or orders, to be made available to the public or to any person who engaged in the acts complained of in the petition. This protects them from a dangerous respondent who doesn't know their current address.

Providing and Verifying (KRS 403.725(4))

Petitions shall be filed on forms prescribed by the Administrative Office of the Courts and provided to the person seeking relief by the **circuit clerk** or by another individual authorized by the court to provide and verify petitions in emergency situations, such as law enforcement officers and Commonwealth's or county attorneys.

Forwarding documents to law enforcement (KRS 403.751(2))

The circuit clerk sends a copy of each summons, EPO, DVO or foreign (out-of-state) protective order, within 24 hours of its being filed, to the appropriate law enforcement agency designated to enter domestic violence records into the Law Information Network of Kentucky (LINK) and the agency assigned service. Generally speaking, the "entering agency" is a local law enforcement agency with a LINK terminal; if there is no such agency in the county; the State Police is the entering agency.

3. Duties of the County Attorney

Providing and Verifying KRS 403.725 (4)

The petition shall be filed on forms prescribed by the Administrative Office of the Courts and provided to the person seeking relief by the circuit clerk or by another individual authorized by the court to provide and verify petitions in *emergency situations*, such as law enforcement officers and *Commonwealth's or county attorneys*.

D. Duties of Law Enforcement Officers

1. Providing and Verifying (KRS 403.725 (4))

The petition shall be filed on forms prescribed by the Administrative Office of the Courts and provided to the person seeking relief by the circuit clerk or by another individual authorized by the court to provide and verify petitions in emergency situations, such as *law enforcement officers* and *Commonwealth's or county attorneys*.

2. Preventing Further Abuse At The Scene (KRS 403.785(2))

Whether or not an arrest has been made, if the officer has reason to suspect that a family member, member of an unmarried couple, or household member has been the victim of domestic violence, the officer shall use all reasonable means necessary to prevent further domestic violence, including but not limited to:

- Remaining at the scene as long as the officer reasonably suspects there is danger to the physical safety of the individuals present without the presence of a law enforcement officer;
- Assisting the victim to obtain medical treatment, including offering to transport, or arranging for the transportation of the victim to the nearest medical treatment facility capable of providing the necessary treatment; and
- Advising the victim immediately of rights and services available including those provided in KRS 421.500 and Chapter 403.

Note: These “rights and services” include information about criminal complaint procedures, availability and enforcement of civil protective orders, availability of emergency shelter services, protective services of DCBS, and other community resources. Many of these rights and

services are printed on “Victim Rights Information” tear-off portion of the JC-3 form.

Note: Tearing off the victim rights information portion of the JC-3 form and giving it to a victim may not fully satisfy this duty. The responding officer should also ensure that the victim can read and understand the printed form.

- Whether or not an arrest has been made, the officer shall report any known or suspected adult or child abuse, neglect or exploitation immediately, or any known or suspected domestic violence or abuse within 48 hours, to the Cabinet for Health and Family Services, Department for Community Based Services using the JC-3 form.

Note: Death of an adult or child does not relieve the officer of the responsibility to report the circumstances surrounding the death related to abuse or neglect.

3. Safe Environment

In order to protect the victim and provide access to a safe environment the officer should:

- Provide a copy of a safety plan, if available;
- Inform the person of local procedures for victim notification. KRS 421.500(3).

4. Crime Victims Bill of Rights (KRS 421.500(3))

As soon as possible, law enforcement personnel, pursuant to KRS 421.500(3) shall ensure that victims receive information on available emergency, social, and medical services upon initial contact with the victim and are given information on the following:

- Availability of crime victim compensation where applicable;
- Community based treatment programs;
- The criminal justice process as it involves the participation of the victim or witness;
- The arrest of the accused; and
- How to find out if a person has been released from jail or a juvenile detention facility.

5. Duty to Report Actual or Suspected Domestic Violence and Abuse.
Each law enforcement agency shall report all incidents of actual or suspected domestic violence and abuse within their knowledge to the Cabinet for Health and Family Services, Department for Community Based Services, within forty-eight (48) hours of learning of the incident or of the suspected incident. KRS 403.785(5).

Officers acting in good faith in enforcing these orders are immune from criminal and civil liability. KRS 403.785(4).

6. Giving notice of orders to respondents (KRS 403.745(1))
A peace officer or court giving notice of an unserved order shall make all reasonable efforts to arrange for the order's personal service upon the respondent. Once effective, a peace officer or the court may enforce the order's terms and act immediately upon their violation.
7. Arresting respondents who violate orders (KRS 431.015(c))
A peace officer shall make an arrest for violations of protective orders issued pursuant to KRS 403.715 to 403.785 or an order of protection as defined in KRS Chapter 456.010.

The officer should not arrest unless the officer first knows:

- The restrictions imposed on the respondent by the order (the judge does not always check all blocks on standard form, and the officer may arrest only for violation of an indicated restriction);
- If the order is still in effect (the order is in effect only until the expiration date stated on the face of the order); and
- If the respondent has been served with, or given notice of, the order (the respondent is not bound by the order unless there has been service made or notice given).

Other charges, in addition to "Violation of a protective order," may also be in order.

In the case of a foreign protective order, if the order has expired or its provisions do not prohibit the conduct being complained of, the officer shall not make an arrest unless the provisions of a Kentucky statute have been violated, in which case the peace officer shall take the action required by Kentucky law. KRS 403.7521(4).

8. Good Faith Immunity From Liability

Officers who reasonably perform their duties in good faith have immunity from civil and criminal liability under the following situations:

- Enforcing Emergency Protective Orders or Domestic Violence Orders. KRS 403.785(4).
- Enforcing foreign protective orders. KRS 403.7521(3).
- Making a report or investigation for adult abuse or neglect. KRS 209.050; KRS 403.715(5).
- Making a report or investigation for child dependency, abuse or neglect. KRS 620.050(1); KRS 403.715(5).
- Making a report or investigation for spouse abuse. **KRS 209A.**

E. Duties of Law Enforcement Agencies

1. Reporting Domestic Violence To CHFS (KRS 403.785(5))

REPEALED 17 HB 309

2. Entering Records Into LINK (KRS 403.751(3))

Designated agencies are responsible for entering domestic violence records (EPOs, DVOs and foreign protective orders) into LINK (Law Information Network of Kentucky). These records are sent to the agencies by the circuit clerk's office; they are to be entered immediately upon receipt.

F. Duties of the Administrative Office of the Courts

The Administrative Office of the Courts shall prepare a publicly available information pamphlet containing information on the method of applying for, hearing, amending, and terminating an order requiring participation in a global position monitoring system. KRS 403.761(3).

G. Making Foreign (Out-of-State) Protective Orders Effective In Kentucky

(KRS 403.751 – 7539)

Federal law (18 U.S.C. sec. 2265) requires all states to recognize (give “full faith and credit” to) foreign (out-of-state) protective orders, and the Act implements this requirement. A foreign protective order can be enforced in Kentucky by either presenting it to a peace officer or filing it at a circuit clerk's office.

The Violence Against Women Act provides that a civil protection order issued by the court of one state or tribe shall be accorded full faith and credit by the court of another state or Indian Tribe, and shall be enforced as if it were the order of the court of the

second state or tribe. In order to be given full faith and credit in another state, the issuing court must have had both personal and subject matter jurisdiction and the respondent must have received reasonable notice and an opportunity to be heard for the provision to be in effect. If the issuing state fails to comply with due process requirements in issuing the protection order, the order is not entitled to full faith and credit. Mutual protection orders are not entitled to full faith and credit unless a cross or counter petition, complaint or other written pleading has been filed and the order was issued upon a showing of mutual abuse.

Prior to the enactment of the Violence Against Women Act, a victim with a protection order often could not use that order as the basis for protection if the victim went to work, traveled or moved to most other states. Under this provision, the second state must afford full faith and credit to an order issued by another jurisdiction, even if the victim otherwise would be ineligible for protection in the new state. A victim does not have to wait for abuse to occur in the new state nor does a victim need to be concerned if he or she cannot meet its jurisdictional requirements. Furthermore, a victim does not have to register a protection order in the new state (unless mandated by statute in the enforcing state) -- the protection order of the issuing state should provide continuous protection to the victim. Presumption of validity (KRS 403.7521)

All foreign protective orders shall have the rebuttable presumption of validity. The validity shall only be determined by a court of competent jurisdiction. Until a foreign protective order is declared to be invalid, it shall be given full faith and credit by all peace officers and courts in the Commonwealth.

1. Peace officer treatment of a foreign protective order (KRS 403.7521)

All peace officers shall treat a foreign protective order as a legal document valid in Kentucky, and shall make arrests for violation thereof in the same manner as for a violation of an order of protection issued in Kentucky.

The fact that a foreign protective order has not been entered into LINK shall not be grounds for a peace officer not to enforce the provisions of the order unless it is readily apparent to the peace officer to whom the order is presented that the order has either expired according to a date shown on the order, or that the order's provisions clearly do not prohibit the conduct being complained of. Officers acting in good faith shall be immune from criminal and civil liability.

If the order has expired or its provisions do not prohibit the conduct being complained of, the officer shall not make an arrest unless the provisions of a Kentucky statute have been violated, in which case the peace officer shall take the action required by Kentucky law.

2. Filing and enforcement of a foreign protective order (KRS 403.7527)

A copy of a foreign protective order may be filed in the office of the clerk of any court of competent jurisdiction of this state. A foreign protective order so filed shall have the same effect and shall be enforced in the same manner as an order of protection issued by a court of this state.

H. Effect of Domestic Violence On the Right To Carry A Concealed Weapon

Persons licensed to carry a concealed deadly weapon pursuant to KRS 237.110 may carry a firearm or other concealed deadly weapon on or about their persons at all times within the Commonwealth of Kentucky, if the firearm or concealed deadly weapon is carried in conformity with the requirements of that section.

The Department of Kentucky State Police may *not* issue or renew a license to carry concealed firearms or other deadly weapons if an applicant is prohibited from the purchase, receipt or possession of firearms, ammunition or both pursuant to 18 U.S.C.922 (g), 18 U.S.C. 922 (n) or applicable state law. Additionally, a license may *not* be issued or renewed if the applicant has been convicted of a violation of KRS 508.030 or 508.080 within three (3) years immediately preceding the date on which the application is submitted. However, the commissioner of the Department of Kentucky State Police *may* waive this requirement upon good cause shown and a determination that the applicant is not a danger and that a waiver would not violate federal law. See KRS 237.110.

CHAPTER 3: Interpersonal Protective Orders

A. Statutory Provisions

KRS 456.020 sets forth the law as related to interpersonal violence and abuse.

1. Legislative Intent of the Act

KRS 456.010 to KRS 456.180 shall be interpreted by the courts of the Commonwealth to effectuate the following express legislative purposes:

- Allow victims to obtain effective short-term protection against further wrongful conduct in order that their lives may be as secure and as uninterrupted as possible;
- To expand the ability of law enforcement officers to effectively respond to further wrongful conduct so as to prevent future incidents and to provide assistance to the victims;
- To provide peace officers with the authority to immediately apprehend and charge for violation of an order of protection any person whom the officer has probably cause to believe has violated an order of protection and to provide courts with the authority to conduct contempt of court proceedings for these violations;
- To provide for the collection of data concerning incidents of dating violence and abuse, sexual assault, strangulation, and stalking in order to develop a comprehensive analysis of the numbers and causes of such incidents; and
- Supplement and not repeal or supplant any duties, responsibilities, services, or penalties under KRS Chapters 209, 209A, and 620.

Note: Nothing in this chapter is intended to trigger the application of the provisions of 18 U.S.C. sec 922(g) as to an interpersonal protective order issued on the basis of the existence of a current or previous dating relationship.

2. Definitions for the Act (**KRS 456.010**).

- “*Dating Relationship*” means a relationship between individuals who have or have had a relationship of a romantic or intimate nature. It does not include a casual acquaintanceship or ordinary fraternization in a business or social context. Factors that may be considered (in addition to any other relevant factors) in determining whether the relationship is or was of a romantic or intimate nature include:
 - Declarations of romantic interest
 - The relationship was characterized by the expectation of affection
 - Attendance at social outings together as a couple
 - The frequency and type of interaction between the persons

- Length and recency of the relationship
- Indicia that would lead a reasonable person to understand that a dating relationship existed.
- *“Dating violence and abuse”* means physical injury, serious physical injury, stalking, sexual assault, strangulation, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, strangulation or assault occurring between persons who are or have been in a dating relationship.
- *“Foreign protective order”* means any judgment, decree, or order of protection which is entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265 which was **not** issued on the basis of domestic violence and abuse.
- *“Global Positioning Monitoring System”* means a system that electronically determines a person’s location through a device worn by the person which does not invade his or her bodily integrity and which transmits the person’s latitude and longitude data to a monitoring entity.
- *“Order of Protection”* means any interpersonal order including those issued on a temporary basis and includes foreign protective order.
- *“Sexual Assault”* refers to conduct prohibited as any degree of rape, sodomy, or sexual abuse under KRS Chapter 510 or incest under KRS 530.020.
- *“Stalking”* refers to conduct prohibited as stalking under KRS 508.140 or 508.150.
- *“Strangulation”* refers to conduct prohibited by KRS 508.170 and 508.175.
- *“Substantial violation”* means criminal conduct which involves actual or threatened harm to the person, family, or property of an individual protected by an order of protection.

B. Filing for an Interpersonal Protective Order

1. Who may petition for an interpersonal protective order?

KRS 456.030(1). A petition for an interpersonal protective order may be filed by:

- A victim of dating violence and abuse;
- A victim of stalking;
- A victim of sexual assault;
- An adult on behalf of a victim who is a minor who otherwise qualifies for relief under this subsection.

If the petitioner or respondent to an interpersonal protective order initiates an action under KRS Chapter 403, the party initiating the action shall make known to the court the existence and status of any interpersonal protective orders, which shall remain effective and enforceable until superseded by order of the court in which the KRS Chapter 403 case is filed. KRS 456.080.

Note: All petitions requested, completed, and signed by persons seeking protection under KRS Chapter 456 shall be accepted and filed with the court. KRS 456.030(5).

Note: A person's right to apply for relief under KRS Chapter 456 shall not be affected by that person leaving his or her residence to avoid dating violence and abuse, sexual assault, or stalking. KRS 456.070(8).

2. Where, when and how is a petition for an interpersonal protective order filed?

Where is the petition filed?

- The petition may be filed in the victim's county of residence or a county where the victim has fled to escape dating violence and abuse, stalking, or sexual assault. KRS 456.030(2).
- Jurisdiction over petitions filed under Chapter 456 shall be concurrent between the District Court and Circuit Court. KRS 456.030(6) (a).

When may a petition be filed?

- All Kentucky courts are required to provide twenty-four (24) hour access to interpersonal protective orders in each county with any protocol, whether statewide or local, being subject to Supreme Court review and approval of the initial protocol and any subsequent amendments. This protocol may allow for petitions to be filed in or transferred to a court other than those specified in paragraph (a) of this subsection. KRS 456.030(6) (b).
- The Court of Justice may authorize by rule that petitions in a specific county be filed in accordance with a supplemental jurisdictional protocol adopted for that county. This protocol may provide for petitions to be filed in or transferred to a court other than those specified in 456.030(6) (a). KRS 456.030(6) (c).

How is the Petition filed?

- The petition shall be verified and contain:
- The name, age, address, occupation, residence, and school or postsecondary institution of the petitioner

- The name, age, address, occupation, residence, and school or postsecondary institution of the person or persons who have engaged in the alleged act or acts complained of in the petition
- The facts and circumstances which constitute the basis for the petition
- The names, ages, and addresses of the petitioner's minor children, if applicable. KRS 456.030(3).
- The petition shall be filed on forms prescribed by the Administrative Office of the Courts and provided to the person seeking relief by the circuit clerk or by another individual authorized by the court to provide and verify petitions in emergency situations, such as law enforcement officers and Commonwealth's or county attorneys. KRS 456.030(4).
- If the judge of a court in which there is a pending request for modification or enforcement of an existing order of protection is unavailable or unable to act within a reasonable time, the proceedings may be conducted by any judge of the county in accordance with court rules. KRS 456.030 (8).

Note: No costs, fees, or bond shall be assessed against or required of a petitioner for any filing, hearing, service, or order authorized by or required to implement KRS Chapter 456. KRS 456.070 (2)

When does the protective order become effective and for how long will the order be in effect?

(1) A temporary or ordinary interpersonal protective order shall *become effective and binding on the respondent when the respondent is given notice* of the existence and terms of the order by a peace officer or the court or upon personal service of the order, whichever is earlier. A peace officer or court giving notice of an unserved order shall make all reasonable efforts to arrange for the order's personal service upon the respondent. Once effective, a peace officer or the court may enforce the order's terms and act immediately upon their violation. KRS 456.070(1).

(2) Prior to or at a hearing on the petition, if review of a petition for an interpersonal order indicates the presence of an immediate and present danger of dating violence and abuse, sexual assault, or stalking, the court shall, upon proper motion, issue ex parte a temporary interpersonal order *which shall be effective for up to fourteen (14) days from the day of issuance* and may be reissued if the respondent is not present at the hearing and has not served. If the respondent is not served with the summons within 72 hours of the hearing the court shall direct the issuance of a new summons for a hearing not more than fourteen (14) days in the

future. *The court may continue to issue a new summons with a new hearing date every fourteen days for up to six (6) months if not served upon the perpetrator/respondent. At the end of six (6) months without service the order will be rescinded without prejudice. The petitioner may, before the expiration of the order, file a petition for a new order. A new six (6) month process will begin at this time. KRS 456.040-050.*

(3) Following a hearing, ordered under KRS 456.040, if a court finds by a preponderance of the evidence that dating violence and abuse, sexual assault, or stalking has occurred and may again occur, the court may issue an interpersonal protective order which shall be effective for a period of time fixed by the court, not to exceed three (3) years, and may be reissued upon expiration for subsequent periods of up to three (3) years each. KRS 456.060 (1) & (3).

What behavior may be prohibited/What relief may be ordered?

If, upon review of the petition as provided for in KRS 456.050, the court determines that the allegations contained therein indicate the presence of an immediate and present danger of dating violence and abuse, sexual assault, or stalking, the court shall issue, upon proper motion, ex parte, a temporary interpersonal protective order which authorizes the use of relief options set out in KRS 456.060. Following the hearing provided for under KRS 456.040, the court, if it finds from a preponderance of the evidence that an act or acts of dating violence and abuse, sexual assault, or stalking, have occurred and may again occur, may:

- (a) Restrain the adverse party from:
 - (1) Committing further acts of dating violence and abuse, stalking, or sexual assault;
 - (2) Any unauthorized contact or communication with the petitioner or other person specified by the court;
 - (3) Approaching the petitioner or person specified by the court within a distance specified in the order, not to exceed five hundred (500) feet;
 - (4) Going to or within a specified distance of a specifically described residence, school, or place of employment or area where such a place is located; and
 - (5) Disposing of or damaging any of the property of the parties;
- (b) Directing or prohibiting any other actions that the court believes will be of assistance in eliminating future acts of dating violence and abuse, stalking, or sexual assault, except that the court shall not order the petitioner to take any affirmative action; and

(c) Directing that either or both of the parties receive counseling services available in the community in dating violence and abuse cases.

3. Consequences of violating an interpersonal protection order (KRS 456.180)
If a respondent violates the terms of an interpersonal protection order either one of two proceedings may be brought against him: a criminal charge (“violation of a protective order”) or a proceeding for contempt of court.

Court proceedings for contempt of court for violation of an order of protection shall be held in the county where the order was issued or filed.

Court proceedings for a criminal violation of an order of protection shall follow the rules of venue applicable to criminal cases generally.

Note: Nothing in this section shall preclude the Commonwealth from prosecuting and convicting the respondent of criminal offenses other than violation of an order of protection.

A person is guilty of a violation of an order of protection when he or she intentionally violates the provisions of an interpersonal protective order after the person has been served or given notice of the order. Violation of an order of protections is a Class A misdemeanor.

C. Processing of Interpersonal Protective Orders

1. Interpersonal Protective Order Intake Centers

The Court of Justice, county and Commonwealth’s attorneys, law enforcement agencies, and victim services organizations may jointly operate an interpersonal protective order intake center to assist persons who apply for relief under KRS 456. KRS 456.070(7) (a).

2. Duties of the Judge

The judge reviews the petition and, if the petition does describe a situation of dating violence and abuse, stalking, or sexual assault, the judge proceeds as follows.

Reviewing the petition (KRS 456.040 (1) (a))

Any judge to whom a petition is referred under KRS 456.030(6) shall have full authority to review and hear a petition and subsequently grant and enforce an interpersonal protective order. KRS 456.030(7).

Acting on the petition

- Petitioner **not** in danger (KRS 456.040(1))

If the judge decides the petition does not show the petitioner to be in immediate danger, the judge fixes a date, time and place for a hearing, to be held within fourteen (14) days of the issuing of a summons for the respondent.

The judge issues a summons. The summons, a copy of the order fixing the date of the hearing, and a copy of the petition are served on the respondent personally. A summons may be reissued if services have not been made on the respondent by the fixed court date and time.

- Petitioner in danger (KRS 456.040(2))

If the judge decides the petition does show an immediate danger not only are a date, time and place for a hearing set, but the judge also issues ex parte a temporary interpersonal protective order that authorizes relief appropriate to the situation, expires upon the conclusion of the evidentiary hearing unless extended or withdrawn by subsequent order, and does not order or refer the parties to mediation unless requested by the petitioner and the court finds that the request is voluntary and that mediation is a realistic and viable alternative to or adjunct to the issuance of an order sought by the petitioner.

If an order is not issued under KRS 456.040(2), the court shall note on the petition, for the record, any action taken or denied and the reason for it. KRS 456.040(2) (b).

The Court of Justice shall provide a protocol for twenty-four (24) hour access to interpersonal protective orders in each county with any protocol, whether statewide or local, being subject to Supreme Court review and approval of the initial protocol and any subsequent amendments. This protocol may allow for petitions to be filed in or transferred to a court other than those specified in paragraph (a) of this subsection. KRS 456.030 (6) (b).

KRS 456.060 (1) The law provides the judge with seven alternatives to use in a temporary interpersonal order to deal with the emergency. Any one, or any combination of which, may be used.

1. Restraining the adverse party from committing further acts of dating violence and abuse, stalking, or sexual assault;

2. Restrain the adverse party from making any unauthorized contact or communication with the petitioner or other person specified by the court;
3. Restrain the adverse party from approaching the petitioner or other person specified by the court within a distance specified in the order, not to exceed five hundred (500) feet;
4. Restrain the adverse party from going to or within a specified distance of a specifically described residence, school, or place of employment or area where such a place is located;
5. Restrain the adverse party from disposing of or damaging any of the property of the parties;
6. Enter other orders the court believes will be of assistance in eliminating future actions of dating violence and abuse, stalking or sexual assault, except that the court shall not order the petitioner to take any affirmative action; or
7. Direct that either or both of the parties receive counseling services available in the community in dating violence and abuse cases.

A court ***shall not*** require mediation, conciliation, or counseling prior to or as a condition of issuing an interpersonal protective order.
KRS 456.070(3).

A temporary interpersonal order is valid for up to 14 days (the date of the expiration should appear on the order). It should set the date, within the 14 day period for a full hearing in open court. If the respondent is not served with the summons within 72 hours of the hearing the court shall direct the issuance of a new summons for a hearing not more than fourteen (14) days in the future. The court may continue to issue a new summons with a new hearing date every fourteen (14) days for up to six (6) months if not served upon the perpetrator/respondent. At the end of the six (6) month without service the order will be rescinded without prejudice. The petitioner may, before the expiration of the order, file a petition for a new order. A new six (6) month process will begin at this time. KRS 456.050(2).

Service of the summons and hearing order are served personally on the respondent. (KRS 456.040(1) (b)).

A court may issue *mutual protective orders* **only** if separate petitions have been filed by both parties and the orders are written with sufficient specificity to allow any peace officer to identify which party has violated the order. KRS 456.070(4).

Note: In imposing a location restriction described in KRS 456.060(1)(a)(4) the court shall afford the petitioner and respondent, if present, an opportunity to testify on the issue of the locations and areas from which the respondent should or should not be excluded; only impose a location restriction where there is a specific, demonstrable danger to the petitioner or other person protected by the order; specifically describe in the order the locations or areas prohibited to the respondent; and consider structuring a restriction so as to allow the respondent transit through an area if the respondent does not interrupt his or her travel to harass, harm, or attempt to harass or harm the petitioner.

KRS 456.060 (2) (a-d).

Obtaining information and review of documents (KRS 456.050(1))

Prior to a hearing on a petition for an interpersonal protective order, the court may obtain the respondent's Kentucky criminal and protective order history.

The court shall review the documents and consider respondent's criminal history, consider the record of any past orders of protection relating to respondent and the record of compliance or non-compliance, and utilize the information at any hearing to assess which sanctions may protect against danger to the petitioner or other person for whom protection is being sought, with the information so obtained being provided to the parties in accordance with the Rules of Civil Procedure.

The court shall provide a copy of the information to the petitioner and respondent or to their counsel.

If the respondent is a minor, the court may also inquire whether the parties attend school in the same school system to assist the court in imposing conditions in the order that have the least disruption in the administration of education to the parties while providing appropriate protection to the petitioner.

Referral to County Attorney (KRS 456.070(7) (b))

In cases where criminal conduct is alleged, a court may suggest that a petitioner voluntarily contact the county attorney. A court may not withhold or delay relief, however, if the petitioner elects to not contact the county attorney.

Conducting the hearing (KRS 456.060)

At the hearing, the judge hears evidence from both the petitioner and the respondent. If a preponderance of the evidence shows that dating violence and abuse, sexual assault, or stalking has occurred and may again occur, the court may issue an interpersonal protective order.

The judge may also include other alternatives available in a temporary interpersonal protective order.

Interpersonal protective orders are in effect for up to three years and may be reissued. Either party may seek to amend the order.

Note: KRS 456.070(6) specifically provides that any testimony shall not be admissible in any criminal proceeding involving the same parties except for purposes of impeachment.

If no order is issued KRS 456.070 (10) (a)

The court in which the petition was heard may for good cause shown order the expungement of the records of the case if:

1. Six (6) months have elapsed since the case was dismissed; and
2. During the six (6) months preceding the expungement request, the respondent has not been bound by an order of protection issued for the protection of any person, including an order of protection as defined in KRS 456.010.

Note: Denial of Protective Order. If an order is not issued, the court shall note on the petition, for the record, any action taken or denied and the reason for it. KRS 456.040(2)(b).

Note: As used in KRS 456.070(10), “expungement” has the same meaning as in KRS 431.079.

Amendment of interpersonal protective order to require participation in global positioning monitoring system. KRS 456.100

- Substantial violation defined:
“Substantial violation” means criminal conduct which involves actual or threatened harm to the person, family, or property of an individual protected by an order of protections. KRS 456.010(8).

- Gathering records:
A court must review an updated history of the respondent's Kentucky criminal and protective order history before it can amend an order of protection to require respondent's participation in a GPS monitoring system. KRS 456.100(1)(b).
- Amending the Order:
 1. Upon proper filing of a motion, either party may seek to amend an interpersonal protective order. KRS 456.070(5).
 2. Upon a petitioner's request and after an evidentiary hearing, a court may amend a protective order to require the respondent to participate in a GPS monitoring system if:
 - The respondent has committed a substantial violation of a previously entered domestic violence order;
 - The court has reviewed an updated history of the respondent's Kentucky criminal and protective order history; and
 - The court makes a factual determination that the use of a GPS monitoring system would increase the petitioner's safety.
 3. If the judge of a court in which there is a pending request for modification or enforcement of an existing order of protection is unavailable or unable to act within a reasonable time, the proceedings may be conducted by any judge of the county in accordance with court rules. KRS 456.030(8).
- GPS Monitoring System Order (KRS 456.100 (2)).
An order requiring participation in a GPS monitoring system shall:
 - require the respondent to pay the cost of participation up to the respondent's ability to pay, with the system operator bearing any uncovered costs for indigent respondents;
 - state with specificity the locations or areas where the respondent is prohibited from being located or persons with whom the respondent shall have no contact;
 - include the date the order expires, which shall be no longer than the expiration date of the underlying interpersonal protection order, although participation may be extended if the underlying protection order is extended;
 - require the entity that operates the monitoring system to immediately notify the petitioner, the local law enforcement

agency named in the order, and the court if a respondent violates the order; and

- include any other information as the court deems appropriate.

- Payment for monitoring program

The Supreme Court may establish by rule a sliding scale of payment responsibility for indigent defendants for use in establishing required payments under KRS 456.100(4).

A person, county, or other organization may voluntarily agree to pay all or a portion of a respondent's monitoring costs.

- Violations and Penalties.

A respondent who fails to wear, removes, tampers with, or destroys a GPS monitoring system device in contravention of an order entered under this section shall be guilty of a Class D felony. KRS 456.100(6).

- Termination of the monitoring program.

An order requiring participation shall include the date that the order expires, which shall be no longer than the underlying protective order, although participation may be extended if the underlying order is extended. KRS 456.100(2).

An order requiring participation may be shortened or vacated by the court wither upon the request of the petitioner or the request of the respondent after an evidentiary hearing, if the respondent has not violated the order and three (3) months have elapsed since the entry of the order and no previous request has been made by the respondent in the previous six (6) months. KRS 456.100(5).

Written protocols required by each court KRS 456.030 (6) (a-c).

- All courts shall provide 24 hour access to interpersonal protective orders.
- The Court of Justice shall provide a protocol for twenty-four (24) hour accessibility to be reviewed and approved by the Kentucky Supreme Court.
- There shall be concurrent jurisdiction between District and Circuit Court and a petition may be filed by a petitioner in either court, except that a petition shall be filed in a family court if one has been established in the county where the petition is filed.
- The Court of Justice may authorize by rule that petitions in a specific county be filed in accordance with a supplemental jurisdictional protocol adopted

for that county. This protocol may provide for petitions to be filed in or transferred to a court other than those specified in KRS 456.030(6) (a).

3. Duties of the Court Clerk

Deleting petitioner's address from documents to be served on the respondent

Note: A court shall order the omission or deletion of the petitioner's address and the address of any minor children from any orders or documents to be made available to the public or to any person who engaged in the acts complained of in the petition. KRS 456.070(9).

Forward Documents to Law Enforcement (KRS 456.110 (2)).

The circuit clerk, in cooperation with the court, shall cause a copy of each summons or order issued pursuant to KRS chapter 456, or foreign protective order, fully completed and authenticated pursuant to KRS Chapter 456, to be forwarded, by the most expedient means reasonably available and within twenty-four (24) hours following its filing with the clerk, to the appropriate agency designated for entry of interpersonal protective order records into the LINK and to the agency assigned service. Any order or court record superseding, modifying, or otherwise affecting the status of an earlier summons or order shall likewise be forwarded by the circuit clerk to the appropriate LINK entering agency and to the agency assigned service, if service is required. The clerk and the court shall comply with all provisions and guidelines of the LINK for entry of the records. KRS 456.110(2).

Provide Forms for Petitioner (KRS 456.030 (4))

The circuit court clerk (or another individual authorized by the court) shall provide the petitioner with the forms on which to file the petition.

4. Duties of the County Attorney

Providing and Verifying (KRS 456.030(4))

If authorized by the court to do this, the *Commonwealth's or county attorney*, in emergencies, is to provide and verify petitions for interpersonal protection orders. Such petitions are then filed in court.

The Court of Justice, county and Commonwealth's attorneys, law enforcement agencies, and victim services organizations may jointly operate an interpersonal protective order intake center to assist persons who apply for relief under KRS Chapter 456. KRS 456.070(7)(a).

In cases where criminal conduct is alleged, a court may suggest that a petitioner voluntarily contact the county attorney. A court may not withhold or delay relief if the petitioner elects to not contact the county attorney. KRS 456.070(7) (b).

D. Duties of Law Enforcement Officers

1. Providing and Verifying (KRS 456.030(4))

If authorized by the court to do this, an *officer*, in emergencies, is to provide domestic violence and abuse petitions to victims and to verify (administer an oath on) the petitions. Such petitions are then filed by the officer with the court.

2. Preventing Further Abuse at the Scene (KRS 456.090(2))

When a law enforcement officer has reason to suspect that a person has been the victim of dating violence and abuse, sexual assault, or stalking, the officer shall use all reasonable means to provide assistance to the victim, including but not limited to:

- Remaining at the scene as long as the officer reasonably suspects there is danger to the physical safety of individuals there without the presence of a law enforcement officer;
- Assisting the victim to obtain medical treatment, including offering to transport, or arranging for the transportation of the victim to the nearest medical treatment facility capable of providing the necessary treatment; and
- Advising the victim immediately of the rights and services available including the provisions of this chapter.

3. Assisting in having the provisions complied with (KRS 456.090)

- A court shall direct the appropriate law enforcement agency to assist the petitioner in having the provisions of the order complied with.
- Orders of protection shall be enforced in any county of the Commonwealth.
- Officers acting in good faith in enforcing these orders are immune from criminal and civil liability.

4. Giving notice of order to respondents (KRS 456.070(1))

A peace officer or court giving notice of an unserved order shall make all reasonable efforts to arrange for the order's personal service upon the

respondent. Once effective, a peace officer or the court may enforce the order's terms and act immediately upon their violation.

5. Arresting respondents who violate orders

The officer should not arrest unless the officer first knows:

- The restrictions imposed on the respondent by the order (the judge does not always check all blocks on standard form, and the officer may arrest only for violation of an indicated restriction);
- If the order is still in effect (the order is in effect only until the expiration date stated on the face of the order); and
- If the respondent has been served with, or given notice of, the order (the respondent is not bound by the order unless there has been service made or notice given).

Other charges, in addition to "Violation of a protective order," may also be in order.

In the case of a foreign protective order, if the order has expired or its provisions do not prohibit the conduct being complained of, the officer shall not make an arrest unless the provisions of a Kentucky statute have been violated, in which case the peace officer shall take the action required by Kentucky law. KRS 403.7521(4).

6. Special Warrantless Arrest Power (431.015) – Violation of a Domestic Violence, Protective Order, Interpersonal Protective Order or a Foreign Protective Order. (KRS 431.015 and 403.7521)

A peace officer may arrest a person without warrant when the peace officer has probable cause to believe that the person has intentionally or wantonly caused physical injury to a family member, member of unmarried couple, or another person with whom the person was or is in a dating relationship. KRS 431.005(2).

- A peace officer shall make an arrest for violations of protective orders issued pursuant to KRS 403.715 to 403.785 or an order of protection as defined in KRS 456.010. (KRS 431.015).
- All peace officers shall treat a foreign protective order as a legal document valid in Kentucky, and shall make arrests for a violation

thereof in the same manner as for a violation of an order of protection issued in Kentucky. (KRS 403.7521)

7. **Good Faith Immunity From Liability**

Officers who reasonably perform their duties under KRS Chapter 456 in good faith have immunity from civil and criminal liability. (KRS 456.090 (4))

E. Duties of Law Enforcement Agencies

1. **Entering Records into LINK**

Each agency designated for entry of summonses and orders issued pursuant to this chapter, or foreign protective orders authenticated pursuant to this chapter, into the Law Information Network of Kentucky shall, enter the records immediately upon receipt of copies forwarded to the agency in accordance with subsection (2) of this section. KRS 456.110(3).

F. Duties of the Administrative Office of the Courts

1. The Administrative Office of the Courts shall prepare a publicly available information pamphlet containing information on the method of applying for, hearing, amending, and terminating an order requiring participation in a global position monitoring system. KRS 456.100 (3).
2. The AOC shall prescribe the forms on which petitions for interpersonal protective orders are filed. KRS 456.030 (4).
3. After consultation with the Justice and Public Safety Cabinet, the AOC shall prescribe forms on which all forms, affidavits, and orders of protection issued or filed pursuant to KRS Chapter 456. KRS 456.110(1).

G. Making Foreign (Out-of-State) Protective Orders Effective in Kentucky

(KRS 456.120 – 170)

1. **Presumption of validity (KRS 456.120(1))**

All foreign protective orders shall have the rebuttable presumption of validity. The validity shall only be determined by a court of competent jurisdiction. Until a foreign protective order is declared to be invalid, it shall be given full faith and credit by all peace officers and courts in the Commonwealth.

2. **Peace officer treatment of a foreign protective order (KRS 456.120(2)-(4))**

All peace officers shall treat a foreign protective order as a legal document valid in Kentucky, and shall make arrests for violation thereof in the same manner as for a violation of an order of protection issued in Kentucky.

The fact that a foreign protective order has not been entered into LINK shall not be grounds for a peace officer not to enforce the provisions of the order unless it is readily apparent to the peace officer to whom the order is presented that the order has either expired according to a date shown on the order, or that the order's provisions clearly do not prohibit the conduct being complained of. Officers acting in good faith shall be immune from criminal and civil liability.

If the order has expired or its provisions do not prohibit the conduct being complained of, the officer shall not make an arrest unless the provisions of a Kentucky statute have been violated, in which case the peace officer shall take the action required by Kentucky law.

3. Legal proceedings for violation of a foreign protective order (KRS 456.120(5))
Civil proceedings and criminal proceedings for violation of a foreign protective order for the same violation of the protective order shall be mutually exclusive. Once either proceeding has been initiated, the other shall not be undertaken, regardless of the outcome of the original proceeding.
4. Filing a foreign protective order (KRS 456.140)
A copy of a foreign protective order may be filed in the office of the clerk of any court of competent jurisdiction of this state. A foreign protective order so filed shall have the same effect and shall be enforced in the same manner as an interpersonal protective order issued by a court of this state.
 - a. At the time of filing, the person filing the order shall file with the clerk of the court an affidavit on a form prescribed by the Administrative Office of the Courts.
 - i. The affidavit shall set forth the name, city, county, and state or other jurisdiction of the issuing court.
 - ii. The person shall certify in the affidavit the validity and status of the foreign protective order, and attest to the person's belief that the order has not been amended, rescinded, or superseded by any orders from a court of competent jurisdiction.
 - iii. All foreign protective orders presented with a completed and signed affidavit shall be accepted and filed.

- iv. The affidavit signed by the applicant shall have space where the reviewing judge shall place information necessary to allow the order's entry into LINK in the same manner as a Kentucky order.

5. Duties of court clerk (KRS 456.140(3))

- a. If the person seeking to file the order presents a copy of the foreign protective order which is current by the terms of the order and has been certified by the clerk, the court clerk shall present it to the District Judge or Circuit Judge, who shall read the order and enter on the affidavit the information necessary to allow the order's entry into LINK. The order shall not be subject to further verification and shall be accepted as authentic, current, and subject to full faith and credit.
 - i. If the order presented is current, but not certified in the manner specified above, the circuit clerk shall present the order and the affidavit to the District or Circuit Judge, who shall read the order and enter on the affidavit the information necessary to allow the order's entry into LINK.
 - A. The order shall be subject to full faith and credit in the same manner as a Kentucky interpersonal protective order, but shall be subject to verification by the circuit clerk.
 - B. The order shall be valid for a period of fourteen (14) days and may be renewed once for a period of fourteen (14) days if the circuit clerk has not received a certified copy of the order from the issuing jurisdiction.
 - C. The clerk shall treat the foreign protective order in the same manner as an interpersonal protective order of this state, except that no service on the adverse party shall be required pursuant to 18 U.S.C. sec. 2265.
- b. Upon the filing of an uncertified protective order, the circuit clerk shall, within two (2) business days, contact the issuing court to request a certified copy of the order. If the certified copy of the order is received by the circuit clerk within the initial fourteen (14) day period, the clerk shall cause the information that certification has been received to be entered into LINK and shall notify the applicant for the order of the fact of its certification. A facsimile copy of a certified foreign protective order shall be grounds for the issuance of an interpersonal protective order.

- c. If the clerk has not received a certified copy of the foreign protective order within ten (10) days, the clerk shall notify the court and the applicant that the order has not been received.
 - i. The notice to the applicant, on a form prepared by AOC, shall state that the foreign protective order will be extended another fourteen (14) days, but will be dismissed at the expiration of that time.
 - ii. If the clerk informs the judge in writing that the certified foreign protective order has been requested but has not yet been received, the judge shall extend the foreign protective order for a period of fourteen (14) days.
 - iii. If certification of the foreign protective order has not been received within twenty-eight (28) days, the foreign protective order shall expire and shall be not reissued.
 - iv. If the applicant meets the qualifications for the issuance of a Kentucky interpersonal protective order, the court may, upon proper application and showing of evidence, issue a Kentucky order in accordance with KRS Chapter 456.
- d. When the court declares an order to be authenticated, pursuant to KRS 456.150(1), the clerk shall notify the person who filed the foreign protective order of the decision of the court and provide the person a certified copy of the affidavit declaring the authentication of the order.
KRS 456.150(3).

Note: The right of a person filing a foreign protective order to bring an action to enforce the order instead of proceeding under KRS Chapter 456 remains unimpaired. KRS 456.140(4).

- 6. Duty of the court (KRS 456.150)
 - (1) Upon ex parte review of the foreign protective order and the affidavit filed pursuant to KRS 456.140, and after determining the order is entitled to full faith and credit in this Commonwealth pursuant to 18 U.S.C sec. 2265, the court shall declare the order to be authenticated and record the finding on the affidavit.
 - (2) If the court declares the order to be authenticated, the court shall:
 - Direct the appropriate law enforcement agency to assist the petitioner in having the provisions of the order complied with, if applicable; and

- Order its enforcement in any county of the Commonwealth in the same manner as an interpersonal protective order of this state issued pursuant to KRS 456.060.

7. Clearing a foreign protective order (KRS 456.160)

(1) A foreign protective order which has been entered into LINK shall be immediately cleared as an active record from the computer system when:

- a. The order expires according to the terms contained therein;
- b. A Kentucky court notifies LINK that a foreign protective order has been dismissed, either by a court order or entry of notification by a circuit clerk; or
- c. A circuit clerk notifies LINK that a foreign protective order tendered to the clerk has not been authenticated in the time period specified in KRS 456.140.

(2) For validation purposes, LINK shall provide the circuit clerk with a printout of foreign protective orders. The clerk shall validate each order annually by contacting the original issuing court of jurisdiction. If the clerk has not received information from the foreign jurisdiction within thirty-one (31) days, the clerk shall cause those orders to be cleared from LINK.

8. Obligations of person filing a foreign protective order (KRS 456. 170).

A person who has filed a foreign protective order in a court in Kentucky is under a continuing obligation to inform the court of any expiration, vacation, modification, or other change in the order which the person filing the order has received from the issuing foreign court. KRS 456.170 (1).

- A person who has filed a foreign protective order in a court in Kentucky shall, within two (2) working days of the occurrence of any event specified above, notify the clerk of the court in which the foreign protective order was filed of the fact of the changed order and present the clerk with a copy of the order for authentication as provided in this chapter. The clerk shall immediately notify the LINK entering agency of the modification. KRS 456.170(2).

Note: No court in Kentucky and no peace officer in Kentucky shall be expected to enforce a provision of a foreign protective order which has been the subject of any action specified in KRS 456.160 subsection (1), unless proper notice has been given. KRS 456.170 (3).

Note: Intentional failure of a person who has filed a foreign protective order to make the notifications required by KRS 456.160 in the manner required shall constitute contempt of court and may be grounds for an appropriate civil action brought by any person damaged by the intentional act of omission by the person failing to act. KRS 456.170 (4).

9. Assisting a court of another state in determining whether an order is entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265. (KRS 456.130).
 - (a) All interpersonal protective orders shall include a statement certifying that the issuing court had jurisdiction over the parties and the matter, and that reasonable notice and opportunity to be heard has been given to the person against whom the order is sought sufficient to protect that person's right to due process; and
 - (b) All temporary interpersonal protective orders shall include a statement certifying that notice and opportunity to be heard has been provided within the time required by state law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

CHAPTER 4: *Preliminary/Pretrial Issues*

A. Laws of Arrest

1. General Arrest Powers

An officer obviously has all the arrest authority given to him by KRS 431.005(1) with a warrant and without a warrant, for felonies, for misdemeanors and for violations.

An officer can use an arrest as a means of stabilizing a domestic situation and should have in mind those offenses most likely to be involved in such a situation: burglary, criminal trespass, assault, stalking, menacing, terroristic threatening, criminal mischief, etc.

Sometimes an arrest becomes possible because of:

- a domestic violence protective order (emergency protective order or order following a hearing) has been served on, or notice of the order has been given to, a person;
- criminal trespass (order requires respondent to vacate residence shared by the parties);
- theft or criminal mischief (order restrains respondent from disposing of or damaging any property of the parties); and/or
- custodial interference (order awards temporary child custody to other party), etc.

2. KRS 431.005(2) – Special Warrantless Arrest Power – Misdemeanor (Fourth Degree) Assault In a Domestic Situation

- Any peace officer may arrest a person without a warrant when the peace officer has probable cause to believe the person has intentionally or wantonly caused physical injury to a family member, member of an unmarried couple, or another person with whom the person was or is in a dating relationship.
- As used in KRS 431.005 (2), “dating relationship,” “family member,” and “member of an unmarried couple” have the same meanings as defined in KRS 403.720 and 456.010.
- For the purpose of KRS 431.005 (2), the term “member of an unmarried couple” has the same meaning as set out in KRS 403.720.
- KRS 431.005(4) For purposes of KRS 431.005(2) of this section, a “peace officer” is an officer certified pursuant to KRS 15.380. Only

officers certified pursuant to KRS 15.380 have the authority to make the arrest authorized by KRS 431.005(2).

- Authority to Arrest. To have the authority to arrest, the officer must have probable cause to believe two things:
 1. A person has intentionally or wantonly caused physical injury (fourth degree assault); **and**
 2. The assault was on a “family member” or “member of an unmarried couple”, or another person who the person was or is in a “dating relationship”.

3. KRS 431.005(5) – Special Warrantless Arrest Power – Violation Of Pretrial Release Order

If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with KRS 431.064 and verifies that the alleged violator has notice of the conditions, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

4. KRS 431.005(7) – Special Warrantless Arrest Power – Violation of A Stalking Restraining Order

A law enforcement officer that has probable cause to believe that a person has violated a restraining order issued under KRS 508.155 shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

5. 431.015 Special Warrantless Arrest Power – Violation of a Domestic Violence Protective Order, Interpersonal Protective Order or a Foreign Protective Order. (KRS 431.015 and 403.7521)

- A peace officer shall make an arrest for violations of protective orders issued pursuant to KRS 403.715 to 403.785 or an order of protection as defined in KRS 456.010. (KRS 431.015).
- (2) All peace officers shall treat a foreign protective order as a legal document valid in Kentucky, and shall make arrests for a violation thereof in the same manner as for a violation of an order of protection issued in Kentucky. (KRS 403.7521)

B. Prosecution Case Preparation

1. Establishment of Prosecution Policy

Each prosecutor office should develop a domestic violence policy. The preference of this Manual is a pro-prosecution model where prosecution is favored, preferably without the participation of the victim. The purpose of the policy is to provide prosecutors and support personnel with clear definitions, direction and guidelines for providing and promoting a consistent, effective response to domestic violence crimes. The policy will serve as a guide and structure rather than establish a rigid formula.

2. Pre-charging Considerations

A domestic violence case should not be dismissed solely because the victim requests that charges be dismissed or fails to cooperate with the prosecutor.

The following *Domestic Violence Checklist* may be of assistance during the initial case assessment and charging decision, as well as during a later case:

Domestic Violence Checklist³²

I. VICTIM	II. SUSPECT
<input type="checkbox"/> Described the victim's location upon arrival.	<input type="checkbox"/> Described the suspect's location upon arrival.
<input type="checkbox"/> Administered first aid to the victim.	<input type="checkbox"/> Administered first aid to the suspect.
<input type="checkbox"/> Recorded any spontaneous statement made by the victim	<input type="checkbox"/> Recorded any spontaneous statements made by the suspect.
<input type="checkbox"/> Described the victim's physical condition.	<input type="checkbox"/> Described the suspect's emotional condition.
<input type="checkbox"/> Documented the victim's injuries in detail.	<input type="checkbox"/> Described the suspect's physical condition.
<input type="checkbox"/> Made note of the victim's relationship to the suspect.	<input type="checkbox"/> Documented the suspect's injuries in detail.
<input type="checkbox"/> Recorded history of abuse.	<input type="checkbox"/> Documented evidence of substance/chemical abuse by suspect.
<input type="checkbox"/> Noted any temporary restraining/court orders.	<input type="checkbox"/> Interviewed the suspect.
<input type="checkbox"/> Gave victim required written information on social agencies, legal steps, etc .	
<input type="checkbox"/> Recorded any temporary address/telephone of victim	

³²Adapted from the San Diego, CA Police Department, Domestic Violence Unit.

<p>III. WITNESS</p> <p>_____ Interviewed the reporting party.</p> <p>_____ Identified all witnesses and interviewed separately.</p> <p>_____ Listed names and ages of children present.</p> <p>_____ Interviewed the children, and recorded statements in report.</p> <p>_____ Recorded names and addresses of emergency personnel.</p> <p>_____ Identified treating physician.</p> <p>_____ Recorded the "911" # _____ and incident # _____</p>	<p>IV.. EVIDENCE</p> <p>_____ Photographed the crime scene.</p> <p>_____ Took "full body" photograph of the suspect.</p> <p>_____ Photographed the suspect's injuries.</p> <p>_____ Impounded all weapons used.</p> <p>_____ Impounded weapons for safekeeping.</p> <p>_____ Attached related reports, photographs, and impound tags to investigator's copy.</p> <p style="text-align: center;">* If not applicable mark "NA".</p>
--	--

3. Potential State Charges

a. Assault and related offenses

- 508.010 Assault in the first degree
- 508.020 Assault in the second degree
- 508.025 Assault in the third degree
- 508.030 Assault in the fourth degree
- 508.032 Assault of a family member or member of an unmarried couple (enhancement of penalty to Class D felony)
- 508.040 Assault under extreme emotional disturbance
- 508.050 Menacing
- 508.060 Wanton endangerment in the first degree
- 508.070 Wanton Endangerment in the second degree
- 508.080 Terroristic Threatening (Third Degree)
- 508.100 Criminal abuse in the first degree
- 508.110 Criminal abuse in the second degree
- 508.120 Criminal abuse in the third degree
- 508.140 Stalking in the first degree
- 508.150 Stalking in the second degree
- 508. 155 Restraining Order upon violation of KRS 508.140 or 508.150
- 508.155 Restraining Order or interpersonal protective Order to be issued upon violation of 508.140 or 508.150.
- 508.170 Strangulation in the first degree
- 508.175 Strangulation in the second degree

b. Kidnapping and related offenses

- 509.020 Unlawful imprisonment in the first degree
- 509.030 Unlawful imprisonment in the second degree
- 509.040 Kidnapping
- 509.070 Custodial interference

c. Homicide

- 507.020 Murder

- 507.030 Manslaughter in the first degree
- 507.040 Manslaughter in the second degree
- 507.050 Reckless homicide

d. Sexual Offenses

- 510.040 Rape in the first degree
- 510.050 Rape in the second degree
- 510.060 Rape in the third degree^{*33}
- 510.070 Sodomy in the first degree
- 510.080 Sodomy in the second degree
- 510.090 Sodomy in the third degree*
- 510.110 Sexual abuse in the first degree
- 510.120 Sexual abuse in the second degree

e. Burglary and related offenses

- 511.020 Burglary in the first degree
- 511.030 Burglary in the second degree
- 511.040 Burglary in the third degree
- 511.060 Criminal trespass in the first degree
- 511.070 Criminal trespass in the second degree
- 511.080 Criminal trespass in the third degree
- 511.085 Domestic violence shelter trespass

f. Criminal damage to property

- 512.020 Criminal mischief in the first degree
- 512.030 Criminal mischief in the second degree
- 512.040 Criminal mischief in the third degree

g. Robbery

- 515.020 Robbery in the first degree
- 515.030 Robbery in the second degree

h. Disorderly conduct and related offenses

- 525.060 Disorderly conduct
- 525.070 Harassment
- 525.080 Harassing Communications

i. Violation of a protective order

- 403.763 Criminal penalty for violation of a protective order
- 403.7539 Criminal penalty for violation of a foreign protective order

³³ * Denotes a new statute or an amendment to an existing statute by the 2018 General Assembly.

- 403.761(11) (b) Criminal penalty for failing to wear, removing or tampering with or destroying a GPS device.
- 456.180 Violation of an Order of Protection (includes interpersonal protective order and foreign protective orders)

j. Other potential charges

- 529.100 Human Trafficking
- 529.110 Promoting Human Trafficking
- 531.120 Distribution of Sexually Explicit Images Without Consent
- 520.095 Fleeing or evading police in the first degree
- 209.030 Duty to report suspected adult abuse; neglect or exploitation; 209.990 Penalties
- 209A.030 Duty to report suspect spouse abuse or neglect Penalties 209A.030 (11)
- 620.030 Duty to report dependency, neglect or abuse of a child; 620.990 Penalty
- 431.064 (10) Penalty for violation of a condition of release
- 530.060 Endangering the welfare of a minor
- 532.025(2)(a)(8) Aggravating circumstance in death penalty case

Note: KRS 421.350 which permits videotaped or closed circuit testimony by victims and witnesses who are 12 years of age and younger, in limited circumstances, may be used in prosecutions for endangering the welfare of a minor and other crimes.³⁴

4. Potential Federal Charges

- a. 18 U.S.C. § 2261 Interstate Domestic Violence**
- b. 18 U.S.C. § 2262 Interstate Violation of Protection Order**
- c. 18 U.S.C. § 2261A (1) Interstate Stalking**
- d. 18 U.S.C. § 2261A (2) Cyber Stalking**
- e. 18 U.S.C. § 922(g) Prohibition Against Disposal of Firearms to, or Receipt of Firearms by, Persons Who Have Committed Domestic Abuse or Who Have Been Convicted of a Misdemeanor Domestic Violence Crime**

³⁴ KRS 421.350 applies to offenses under “KRS 510.040 to 510.155, 529.030 to 529.050, 529.070, 529.100, 529.110, 530.020, 530.060, 530.064(l)(a), 531.310, 531.320, 531.370, or any specified in KRS 439.3401 and all dependency proceedings pursuant to ICRS Chapter 620, when the act is alleged to have been committed against a child twelve (12) years of age or younger, and applies to the statements or testimony of that child or another child who is twelve (12) years of age or younger who witnesses one of the offenses included in this subsection.”

5. Role of the Victim Advocate

Effective and sensitive prosecutors are increasingly turning to lay advocates in order to assist victims in staying safe and also in order to improve conviction rates. Such a lay advocate may be a victim witness worker within the prosecutor's office or a domestic violence advocate from a community program or shelter. In addition, as prosecutors become more involved in coordinating their efforts with those of other interveners in the community, they find themselves joining the advocates to make change and stop violence against women.

Two of the most common kinds of advocacy programs are internal victim ("system-based") witness programs and external (to the prosecutor) community advocacy programs ("community-based"). Each may serve a different purpose, and may have different strengths and limitations. Scarce resources for advocacy means it is necessary to take a broad view and close look at ways to divide resources and victim advocacy functions between internal victim witnesses and external grass roots battered women's programs.

Types of Programs

a. Internal to the Legal System

Roles include:

- Assisting prosecutors in handling and proving cases.
- Assisting law enforcement in dealing with crime victims, especially in gathering evidence that a crime was committed.
- Compliance with Kentucky's crime victim bill of rights.

Location or Site of Program:

- Prosecutors' offices (to assist in obtaining convictions).
- Law enforcement agencies (to improve ability of law enforcement to stop crime).
- Courthouse (to assist with Civil Protection Order applications).

b. External to the Legal System

Roles include:

- Working with individual victim-survivors to provide information, resources, assistance in getting what she has decided she needs as she, not the advocate, defines it; and

- Working to advocate on behalf of the interests of victim-survivors in general with systems such as legal, welfare, and housing.

Location or Site of Program:

- Shelters (provide many varieties of advocacy and other services).
- Community advocacy programs (often attempt to assist victims with any need).
- Intervention projects (monitoring, tracking, and coordinating of cases).

The Primary Issues

a. Confidentiality

- Confidentiality of the advocate and victim-survivor relationship is a central feature for many reasons: safety concerns, need for time to plan escape before the abuser knows the intention to do so, etc.
- KRE 506- This testimonial privilege for the advocate-victim relationship applies to non-prosecutor based programs in Kentucky because of a rule of evidence. Kentucky Rule of Evidence (KRE 506) includes victim advocates in the counselor-client privilege, except those advocates who work in prosecutors' offices.
- Defense counsel have attempted on many occasions to subpoena advocates and records. Bringing motions to quash such attempts is a critical role the prosecutor can and should play to protect local advocacy programs as a resource for victims.
- If a prosecutor needs testimony from an advocate in a non-prosecutor based program, that advocate will need to get a release from the victim/witness

Note: In some jurisdictions prosecutors have successfully prevented disclosure of a victim's privileged mental health records where the victim and/or the psychotherapist have asserted the KRE 507 privilege. In these cases the trial courts have relied on the decision of the United States Supreme Court in *Jaffee v. Redmond*, 116 S.Ct. 1923, 518 U.S. 1 (1996) which was decided subsequent to *Eldred v. Commonwealth*, 906 S.W.2d 694 (Ky. 1994) where the court held that mental health records were discoverable by the

defense. See also, *Commonwealth v. Barroso* 122 S.W. 3d 554 (Ky. 2003), which abrogated *Eldred vs. Commonwealth* to the extent that the Court ruled that in camera review of a witness's psychotherapy records is authorized only upon receipt of evidence sufficient to establish a reasonable belief that the records contain exculpatory evidence; see also *Peak v. Commonwealth*, 197 S.W.3d 536 (Ky. 2006).

b. Comprehensiveness of services provided

Housing, government benefits, custody, divorce, safety planning and securing a civil protection order or other advocacy needs are often addressed.

- KRS 69.350, KRS 15.757. The prosecutor based advocate shall perform those duties necessary to insure compliance with the crime victim's bill of rights contained in KRS 421.500 to 421.530.
- KRS 421.760 In all court proceedings, a victim advocate, upon request of the victim, shall be allowed to accompany the victim during the proceeding to provide moral and emotional support when read in conjunction with KRS 610.060 provides the right to accompany victims to juvenile proceeding.

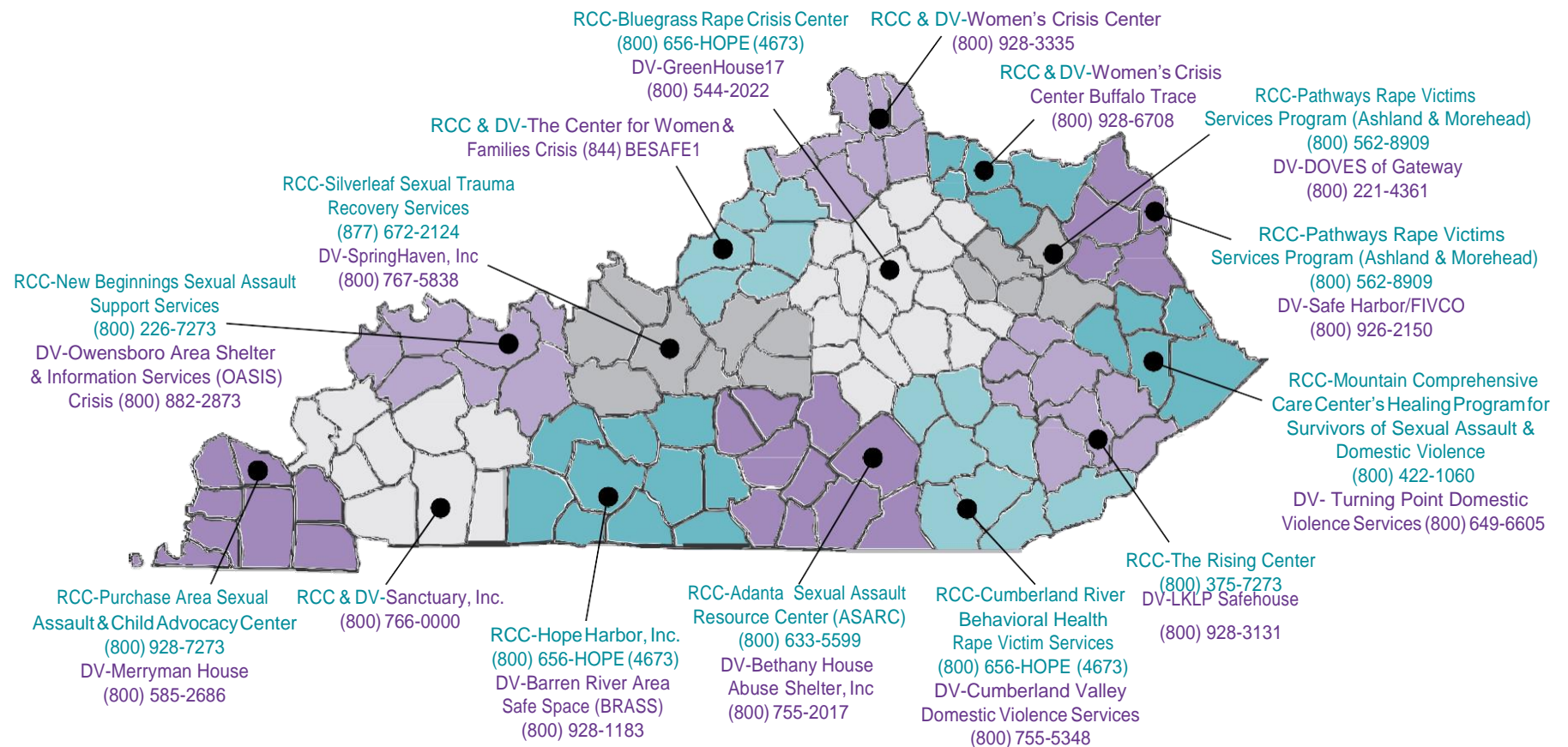
APPENDIX

1.	Domestic Violence and Sexual Assault Program Map	A-2
2.	Power and Control Wheels	A-3
3.	Resource List	A-8
4.	Victim Rights Compliance List for Prosecutors	A-13
5.	Domestic Violence Lethality Screening Tool	A-15
6.	Domestic Violence Strangulation Worksheet	A-16
7.	Americans with Disabilities Act (ADA) – Summary	A-17
8.	ADA Information for Law Enforcement	A-25
9.	Tips for Interacting with Individuals with Disabilities	A-26
10.	Serving Victims with Limited English Proficiency	A-30

Rape Crisis Hotline
Kentucky Association of Sexual Assault Programs
(800) 656-4673
www.kasap.org



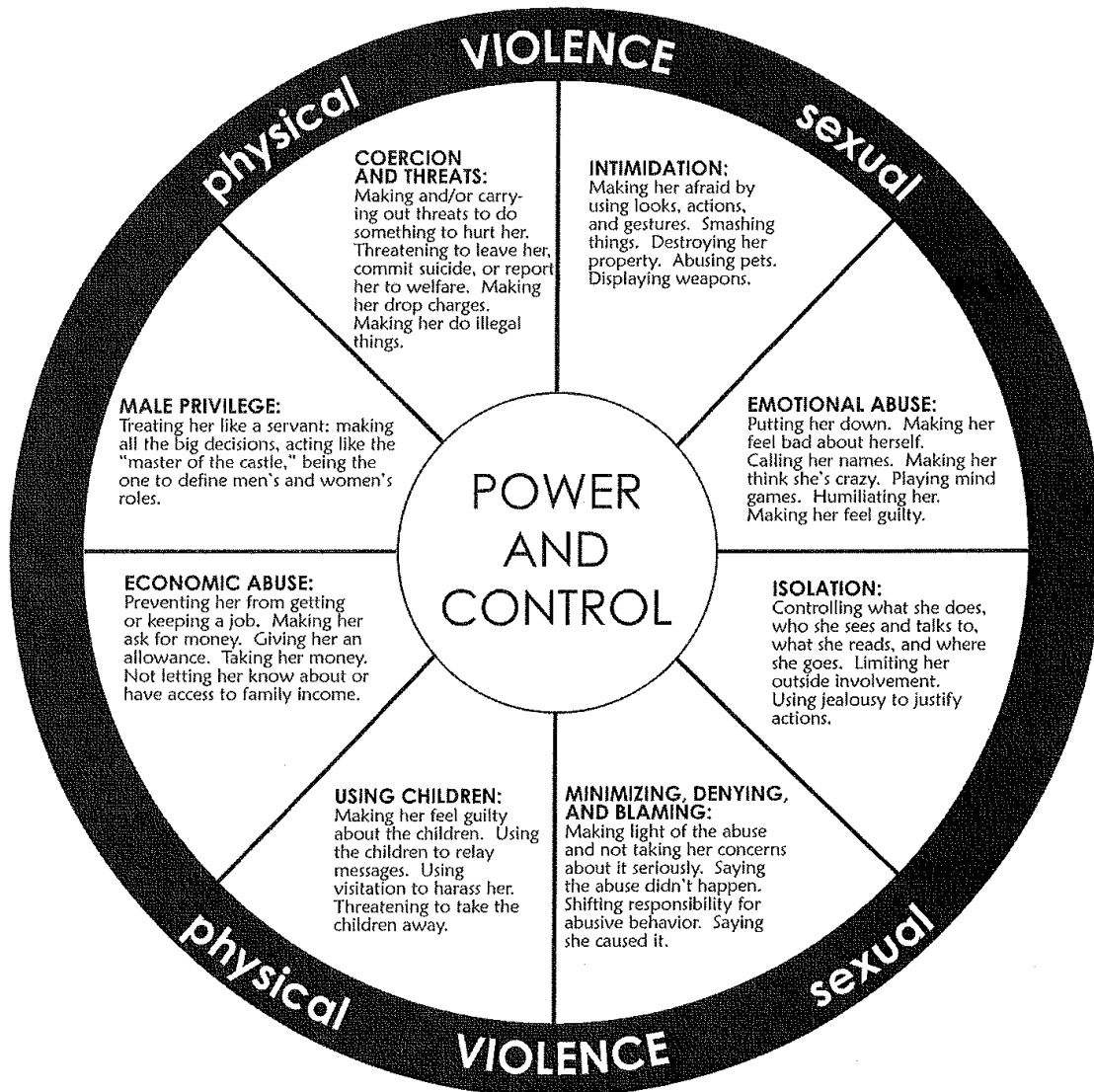
Domestic Violence Hotline
Kentucky Coalition Against Domestic Violence
(800) 799-SAFE
www.kcadv.org



POWER AND CONTROL WHEEL

Physical and sexual assaults, or threats to commit them, are the most apparent forms of domestic violence and are usually the actions that allow others to become aware of the problem. However, regular use of other abusive behaviors by the batterer, when reinforced by one or more acts of physical violence, make up a larger system of abuse. Although physical assaults may occur only once or occasionally, they instill threat of future violent attacks and allow the abuser to take control of the woman's life and circumstances.

The Power & Control diagram is a particularly helpful tool in understanding the overall pattern of abusive and violent behaviors, which are used by a batterer to establish and maintain control over his partner. Very often, one or more violent incidents are accompanied by an array of these other types of abuse. They are less easily identified, yet firmly establish a pattern of intimidation and control in the relationship.



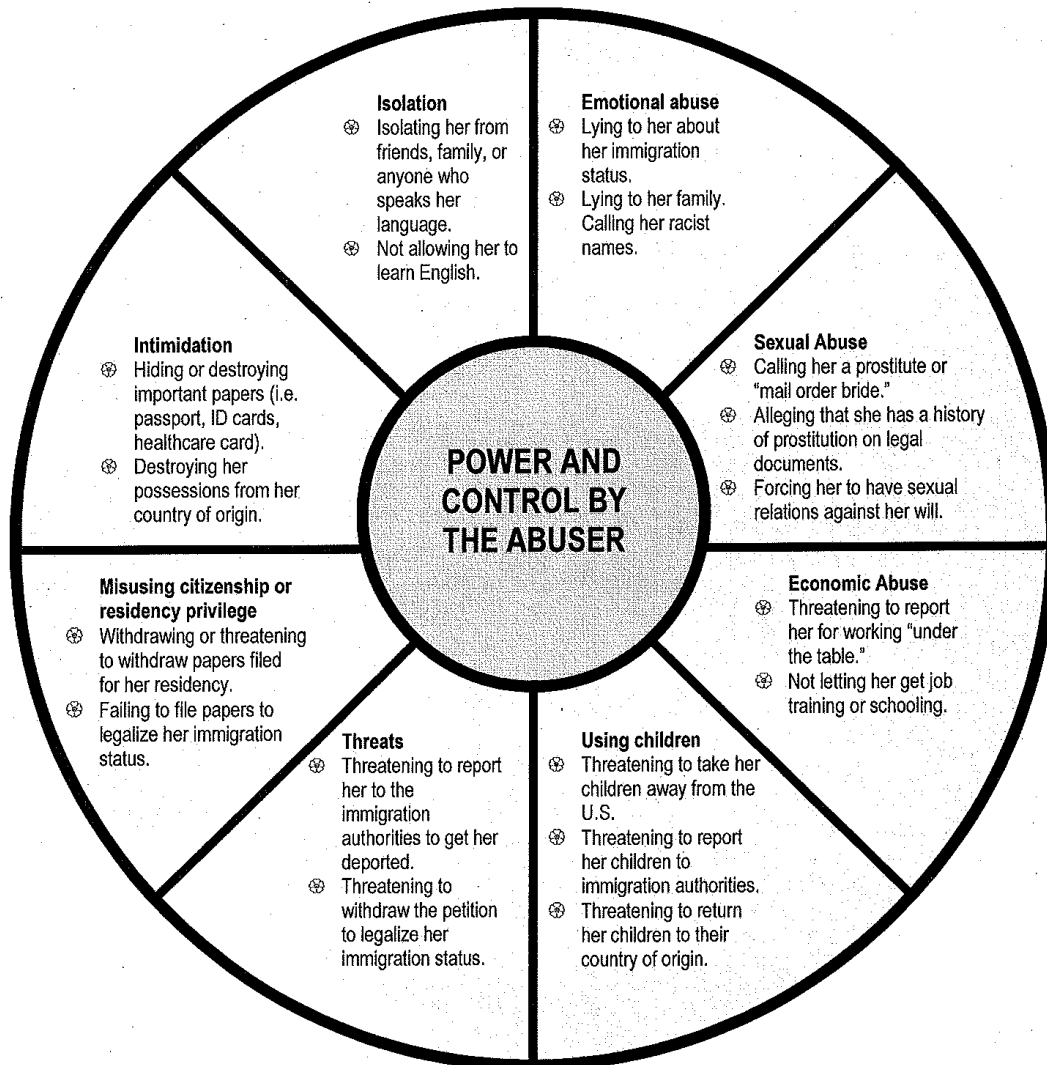
Developed by:
Domestic Abuse Intervention Project
202 East Superior Street
Duluth, MN 55802
218.722.4134

Produced and distributed by:



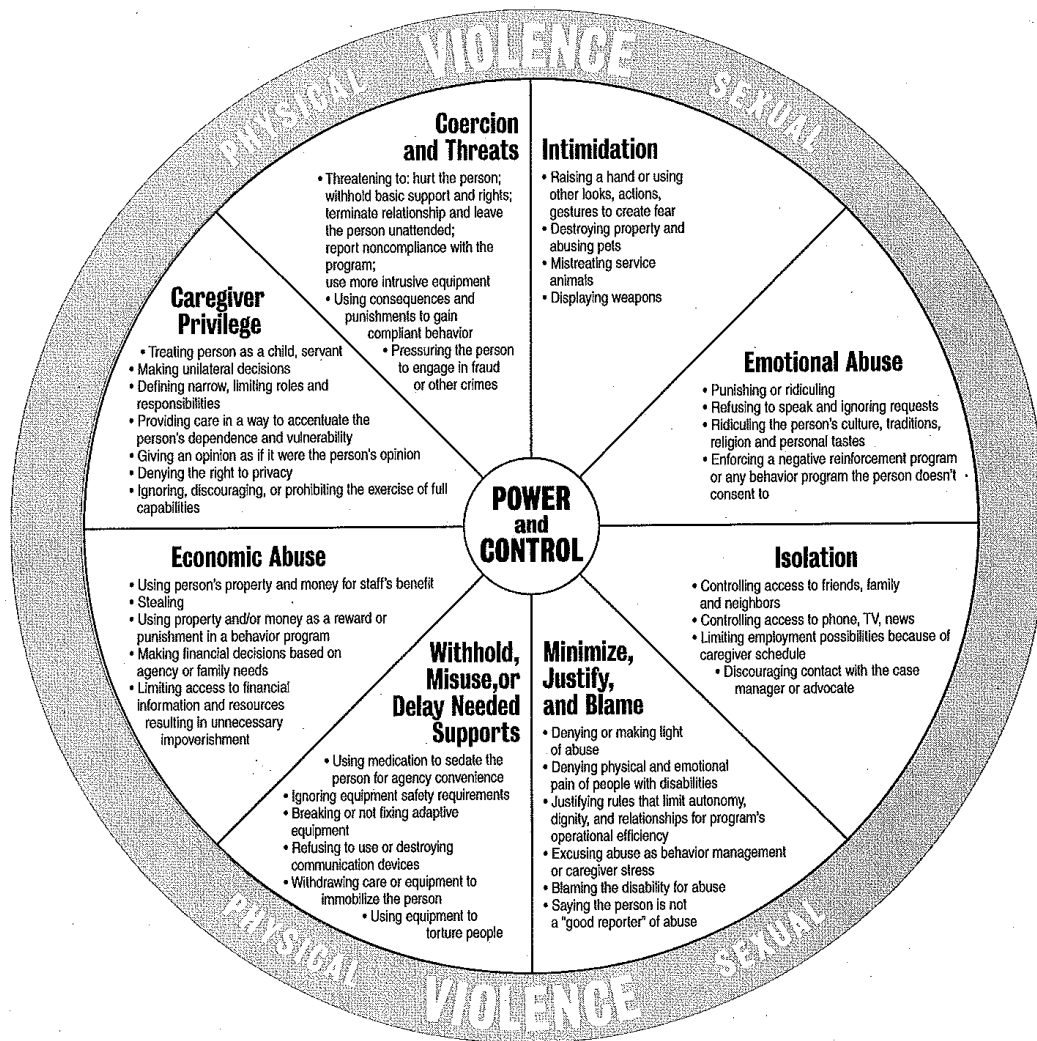
NATIONAL CENTER
on Domestic and Sexual Violence
training • consulting • advocacy
4612 Shoal Creek Blvd. • Austin, Texas 78756
512.407.9020 (phone and fax) • www.ncdsv.org

POWER AND CONTROL OVER IMMIGRANT WOMEN⁶⁷



This material was adapted from the publication entitled "Power and Control Tactics Used Against Immigrant Women," produced by the Family Violence Prevention Fund (FVPF): www.endabuse.org. This version of the Power and Control Wheel, adapted with permission from the Domestic Abuse Intervention Project in Duluth, Minnesota, focuses on some of the many ways battered immigrant women can be abused.

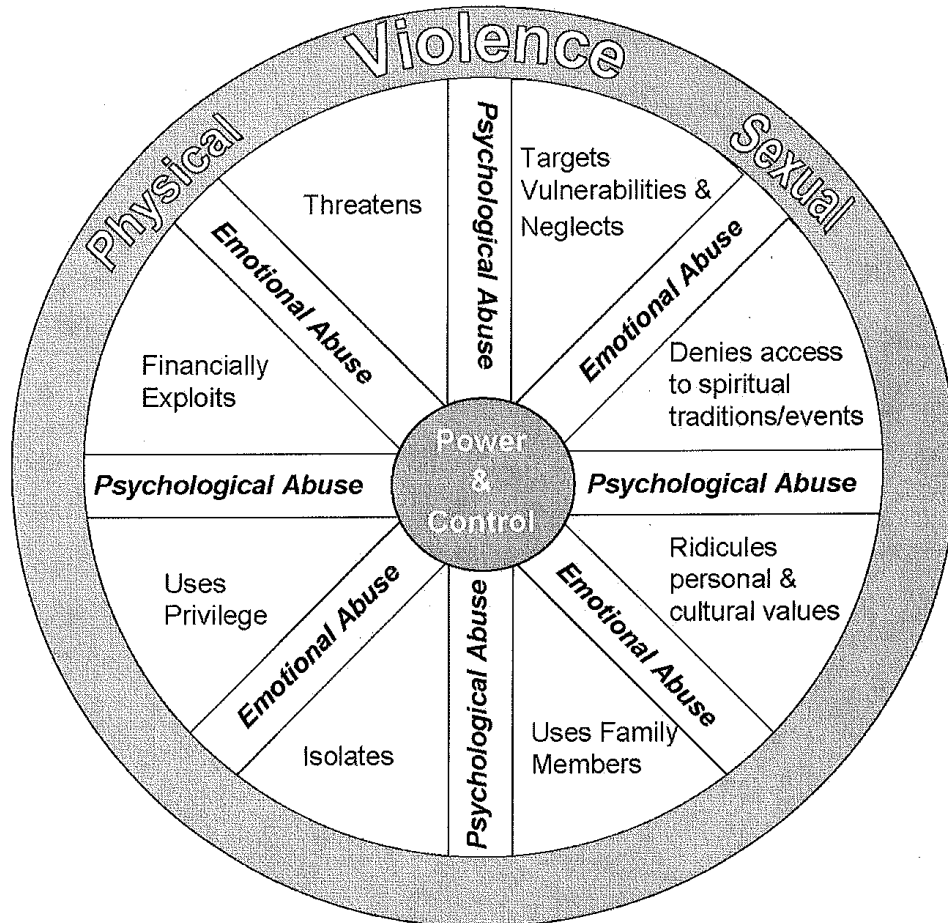
Abuse of People with Developmental Disabilities by a Caregiver



Wisconsin Coalition Against Domestic Violence
307 S. Paterson St., Suite 1, Madison, WI 53703
(608) 255-0539 / FAX: (608) 255-3560

This diagram is based on the Power and Control/Equality wheels developed by the Domestic Violence Intervention Project, Duluth, MN

Abuse in Later Life Wheel

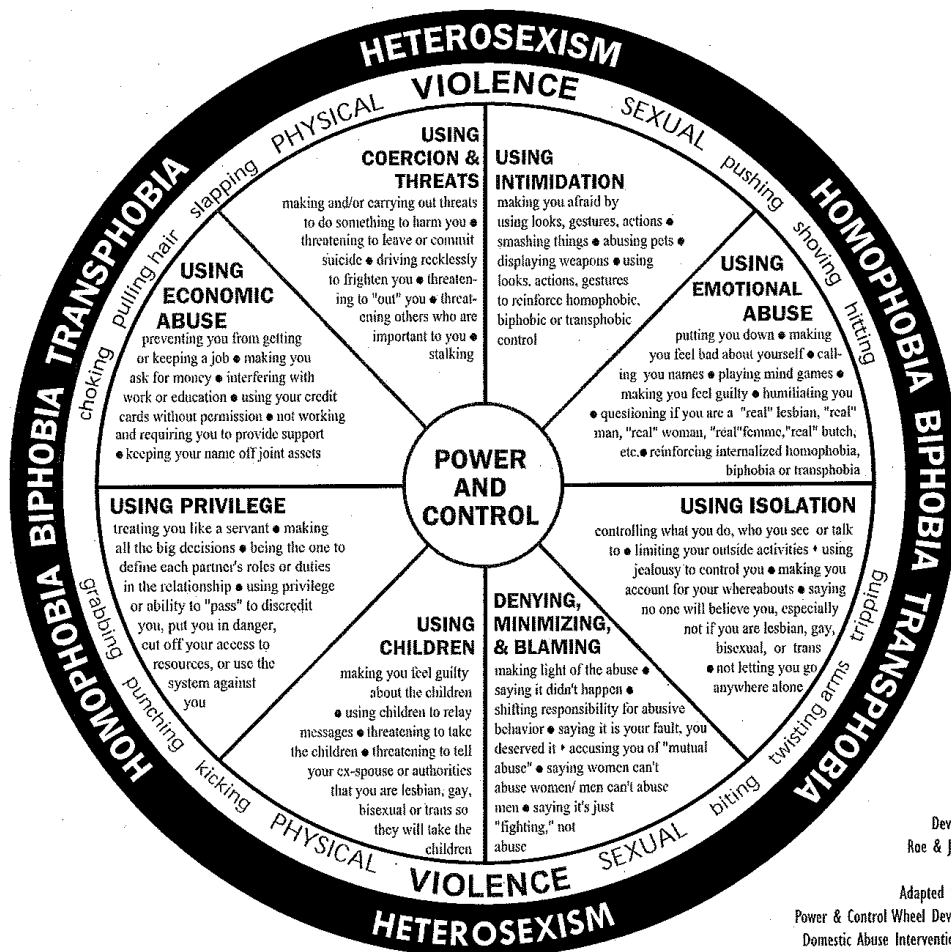


Created by the National Clearinghouse on Abuse in Later Life (NCALL), a project of the Wisconsin Coalition Against Domestic Violence (WCADV)
 307 S. Paterson St., Suite 1, Madison, WI 53703 608-255-0539
www.ncall.us/www.wcadv.org

This diagram adapted from the Power and Control/Equality wheels developed by the Domestic Abuse Intervention Project, Duluth, MN

Permission to Adapt 2006

Power and Control Wheel for Lesbian, Gay, Bisexual and Trans Relationships



Developed by
Roe & Jagodinsky

Adapted from the
Power & Control Wheel Developed by
Domestic Abuse Intervention Project
206 West Fourth Street
Duluth, MN 55806

Adopted by:

**Texas Council On
FAMILY VIOLENCE**

P.O. Box 161810 • Austin, TX 78716
512/794-1133 • Fax: 512/794-1199

RESOURCE LIST

1. **AEquitas: The Prosecutors' Resource on Violence Against Women.**

<http://www.aequitasresource.org/>. Aequitas' mission is to improve the quality of justice in sexual violence, intimate partner violence, stalking, and human trafficking cases by developing, evaluating, and refining prosecution practices that increase victim safety and offender accountability. AEquitas' staff is comprised of former prosecutors, with decades of experience, who conduct legal research; provide 24/7 case consultation; serve as mentors and trainers; and publish resources. The individualized assistance AEquitas provides is data driven and incorporates customized strategies that are easy to implement, resulting in prosecutors' ability to sustain effective practices and promote systemic change.

2. **National Center for the Prosecution of Violence Against Women (NCPVAW), National District Attorney's Association (NDAA).** http://www.ndaa.org/ncpvaw_home.html.

The NCPVAW exists to serve prosecutors, members of the prosecution team and other allied professionals as they strive to deliver justice to all survivors of domestic violence/dating violence, sexual violence, and stalking and to hold criminals accountable. Services provided by the NCPVAW include the following:

- Hosting national training events, including the Annual National Multi-Disciplinary Conference on Domestic Violence and the Prosecuting Sexual Assault Cases Course.
- Designing and providing hands-on trial advocacy training geared towards developing and fine tuning litigation skills for prosecutors who handle sex crimes and domestic violence / dating violence and stalking cases.
- Providing training at state and local conferences on subjects that are relevant to the jurisdictions, expertly delivered by experienced and tested trial and appellate prosecutors as well as scientific and medical experts.
- Designing and conducting multi-day state and local trainings, in consultation with our hosts, to address the needs expressed by the jurisdiction and audience type.
- Providing resources on topics relevant to the prosecution of sexual assault, domestic violence, domestic violence in late life, dating violence, stalking and cyber stalking.
- Providing case consultation for prosecutors, advocates and law enforcement, including consultations on jury selection (and the writing of jury selection questions), theme development, trial visuals, cross-examination of defense witnesses, assisting with expert witness identification and location and witness preparation.

- Advising prosecutors regarding the screening of cases, filing of charges, and offering of plea agreements.
3. **American Bar Association Commission and Domestic and Sexual Violence.** http://www.americanbar.org/groups/domestic_violence.html. The mission of the Commission is to increase access to justice for victims of domestic violence, sexual assault and stalking by mobilizing the legal profession. For two decades, the Commission has focused on policy initiatives and training for lawyers who represent victims of domestic and sexual violence.
 4. **Kentucky Coalition Against Domestic Violence.** <http://kcadv.org/>. The Kentucky Coalition Against Domestic Violence Association (KCADV) is a coalition of Kentucky's fifteen regional domestic violence programs (shelters) providing services to victims of domestic violence and their children. In addition to advocating on behalf of victims of domestic violence, KCADV assists the fifteen domestic violence programs by providing resources, training, and technical assistance. KCADV's mission is to mobilize and support member programs and allies to end intimate partner violence.
 5. **Mary Byron Project.** <http://www.marybyronproject.org/>. The Mary Byron Project was established in 2000 in memory of the young woman whose tragic murder led to the creation of automated crime victim notification technologies. As a nationally recognized thought leader on domestic violence, the Mary Byron Project cultivates and supports efforts that extend beyond crisis management to attack the root causes of this epidemic and help build safer, healthier communities.
 6. **National Domestic Violence Hotline.** <http://www.thehotline.org/>. Operating around the clock, seven days a week, confidential and free of cost, the National Domestic Violence Hotline provides lifesaving tools and immediate support to enable victims to find safety and live lives free of abuse. Callers to The Hotline at 1-800-799-SAFE (7233) can expect highly trained, experienced advocates to offer compassionate support, crisis intervention information and referral services in over 170 languages. Visitors to this site can find information about domestic violence, safety planning, and local resources.
 7. **The Training Institute on Strangulation Prevention.** <https://www.strangulationtraininginstitute.com/>. The Institute, launched in October 2011, was developed in response to the increasing demand for Intimate Partner Violence Strangulation Crimes training and technical assistance (consulting, planning and support services) from communities across the world. It provides training, technical assistance, web-based education programs, a directory of national trainers

and experts, and a clearinghouse of all research related to domestic violence and sexual assault strangulation crimes. The goals of the Institute are to: enhance the knowledge and understanding of professionals working with victims of domestic violence and sexual assault who are strangled; improve policy and practice among the legal, medical, and advocacy communities; maximize capacity and expertise; increase offender accountability; and ultimately enhance victim safety.

8. **Lethality Assessment Program – Maryland Model (LAP).**

http://mnadv.org/mnadvWeb/wp-content/uploads/2011/10/LAP_Info_Packet--as_of_12-8-10.pdf. The LAP, created by the Maryland Network Against Domestic Violence (MNADV) in 2005, is an innovative strategy to prevent domestic violence homicides and serious injuries. It provides an easy and effective method for law enforcement and other community professionals—such as health care providers, clergy members, case workers, and court personnel—to identify victims of domestic violence who are at the highest risk of being seriously injured or killed by their intimate partners, and immediately connect them to the local domestic violence service program. The LAP is a multi-pronged intervention that consists of a standardized, evidence-based lethality assessment instrument and accompanying referral protocol that helps first responders make a differentiated response that is tailored to the unique circumstances of High-Danger victims.

9. **Stalking and Harassment Assessment and Risk Profile (SHARP).**

<http://www.cdar.uky.edu/CoerciveControl/sharp.html>. The Stalking and Harassment Assessment and Risk Profile (SHARP) is a 43 item web-based assessment developed from the empirical research, clinical literature, stories from stalking victims, case studies, as well as feedback from victims, advocates, and other professionals in the field. SHARP provides an assessment of the “big picture” of the stalking situation. The goals of SHARP are accomplished in two ways. First, users respond to 43 stalking situation questions in the web-based assessment. Second, based on how the 43 questions are answered two individually tailored narrative reports are developed. The first report provides a narrative of the stalking situation and the risk profile and the second report provides information about stalking risks and safety suggestions.

10. **Kentucky Association of Sexual Assault Programs.** <http://www.kasap.org/>. The Kentucky Association of Sexual Assault Programs (KASAP) is the coalition of Kentucky's 13 Regional Rape Crisis Centers. Since it was established in 1990, KASAP has served as a central point of contact on sexual violence issues in Kentucky. KASAP provides technical assistance to member programs and other professionals, advocates for improvements in public policy, fosters coalition building among members and those

with common concerns, and promotes prevention and public awareness regarding sexual violence and related issues.

11. **Stalking Resource Center.** <http://victimsofcrime.org/our-programs/stalking-resource-center/about-us>. In 2000, the National Center for Victims of Crime partnered with the U.S. Department of Justice Office on Violence Against Women to create the Stalking Resource Center (SRC). Since its inception, the SRC has trained over 100,000 professionals who work with victims in all 50 states and provided technical assistance to hundreds of communities seeking to enhance their response to stalking. The mission of the SRC is to enhance the ability of professionals, organizations, and systems to effectively respond to stalking. The SRC envisions a future in which the criminal justice system and its many allied community partners will have the best tools to effectively collaborate and respond to stalking, improve victim safety and well-being, and hold offenders accountable.

SRC services include: providing training that is victim-centered, research informed, and practice based at events sponsored by practitioners on the local, state, and national level and providing direct assistance to build the capacity of criminal justice and victim services organizations to respond effectively to stalking. Assistance includes developing a coordinated community response, developing and implementing effective stalking protocols and policies, accessing civil and criminal remedies for stalking victims and developing and enhancing services for victims of stalking.

12. **OutrageUs.** <https://www.outrageus.org/>. OutrageUs was established as a non-profit organization in 2009 by a small group of concerned citizens to bridge the divide between the experiences of partner violence victims and how others view, understand, and respond to those experiences. Through unique collaborations with institutions, communities, and survivors, OutrageUs has and is continuing to develop multimedia resources, services, tools and research informed strategies to help communities build on their strengths and effectively address partner violence. A variety of media, including original personal narrative pieces and short documentary films, have been created to attract and engage a wide and diverse audience.
13. **Rescue and Restore Kentucky.** <http://www.rescueandrestoreky.org/>. Rescue and Restore is a program of Catholic Charities of Louisville. It provides technical assistance to local coalitions throughout the state, as well as services to victims of human trafficking.
14. **Children's Law Center, Inc.** www.childrenslawky.org. CLC is a non-profit law center that provides free legal services for children and youth. CLC runs the Crime Victim

Project, which provides legal services to children and youth, including representation in DVO/IPO hearings.

RESPONSIBILITIES OF PROSECUTORS

CRIME VICTIMS' BILL OF RIGHTS CHECKLIST

Case Name:	Victim Name:	Case #:
------------	--------------	---------

INFORMATION

The attorney for the Commonwealth shall make a reasonable effort to insure that the victim receives available information on:

DATE PROVIDED

- | | |
|---|---|
| <p>_____ <input type="checkbox"/> Protective services</p> <p>_____ <input type="checkbox"/> Emergency services</p> <p>_____ <input type="checkbox"/> Social services</p> <p>_____ <input type="checkbox"/> Medical services</p>
<p>_____ <input type="checkbox"/> How to register with VINE to be notified when a person has been released from a prison, jail, juvenile detention facility, (or psychiatric facility or forensic psychiatric facility if the case involves a violent crime as defined in KRS 439.3401 and the person charged with or convicted of the offense has been involuntarily hospitalized)</p> <p>_____ <input type="checkbox"/> How to receive information on being protected from intimidation, harassment, and retaliation</p> <p>_____ <input type="checkbox"/> The Victim-Witness Protection Program</p> | <p>_____ <input type="checkbox"/> Crime victim compensation (where applicable)</p> <p>_____ <input type="checkbox"/> Restitution (where applicable)</p> <p>_____ <input type="checkbox"/> Obtaining assistance from a victim advocate</p> <p>_____ <input type="checkbox"/> Community-based treatment programs</p> <p>_____ <input type="checkbox"/> Submitting a written victim impact statement</p> |
|---|---|

NOTIFICATION

If victims so desire and if they provide a current address and telephone number, the attorney for the Commonwealth shall provide prompt notification, if possible, of judicial proceedings relating to the case, including but not limited to the following:

DATE PROVIDED

- | | |
|--|---|
| <p>_____ <input type="checkbox"/> Defendant's release on bond and any special conditions of release</p> <p>_____ <input type="checkbox"/> Charges filed against the defendant</p> <p>_____ <input type="checkbox"/> The defendant's pleading to the charges</p> <p>_____ <input type="checkbox"/> Trial date</p> <p>_____ <input type="checkbox"/> Changes in custody of the defendant</p> <p>_____ <input type="checkbox"/> Changes in trial dates</p> <p>_____ <input type="checkbox"/> Trial verdict</p> <p>_____ <input type="checkbox"/> Right to submit a victim impact statement to the court at the time of sentencing</p> <p>_____ <input type="checkbox"/> Sentencing date</p> <p>_____ <input type="checkbox"/> Dates of Parole Board hearings held for the defendant</p> <p>_____ <input type="checkbox"/> Scheduled hearing for shock probation</p> <p>_____ <input type="checkbox"/> Scheduled hearing for bail pending appeal</p> | <p>_____ <input type="checkbox"/> resulting order</p> <p>_____ <input type="checkbox"/> resulting order</p> |
|--|---|

The attorney for the Commonwealth shall make a reasonable effort to insure that

- _____ ☐ Victims and witnesses who are required to attend criminal justice proceedings are notified promptly of any scheduling changes that affect their appearances

RESPONSIBILITIES OF PROSECUTORS

CRIME VICTIMS' BILL OF RIGHTS CHECKLIST

Case Name:	Victim Name:	Case #:
------------	--------------	---------

INFORMATION

The attorney for the Commonwealth shall make a reasonable effort to insure that the victim receives available information on:

DATE PROVIDED

- | | |
|--|--|
| <input type="checkbox"/> Protective services
<input type="checkbox"/> Emergency services
<input type="checkbox"/> Social services
<input type="checkbox"/> Medical services | <input type="checkbox"/> Crime victim compensation (where applicable)
<input type="checkbox"/> Restitution (where applicable)
<input type="checkbox"/> Obtaining assistance from a victim advocate
<input type="checkbox"/> Community-based treatment programs
<input type="checkbox"/> Submitting a written victim impact statement |
|--|--|
-
- ☐
- How to register with VINE to be notified when a person has been released from a prison, jail, juvenile detention facility, (or psychiatric facility or forensic psychiatric facility if the case involves a violent crime as defined in KRS 439.3401 and the person charged with or convicted of the offense has been involuntarily hospitalized)
-
- ☐
- How to receive information on being protected from intimidation, harassment, and retaliation
-
- ☐
- The Victim-Witness Protection Program

NOTIFICATION

If victims so desire and if they provide a current address and telephone number, the attorney for the Commonwealth shall provide prompt notification, if possible, of judicial proceedings relating to the case, including but not limited to the following:

DATE PROVIDED

- ☐
- Defendant's release on bond and any special conditions of release
-
- ☐
- Charges filed against the defendant
-
- ☐
- The defendant's pleading to the charges
-
- ☐
- Trial date
-
- ☐
- Changes in custody of the defendant
-
- ☐
- Changes in trial dates
-
- ☐
- Trial verdict
-
- ☐
- Right to submit a victim impact statement to the court at the time of sentencing
-
- ☐
- Sentencing date
-
- ☐
- Dates of Parole Board hearings held for the defendant
-
- ☐
- Scheduled hearing for shock probation
- ☐ resulting order
-
- ☐
- Scheduled hearing for bail pending appeal
- ☐ resulting order

The attorney for the Commonwealth shall make a reasonable effort to insure that

- ☐
- Victims and witnesses who are required to attend criminal justice proceedings are notified promptly of any scheduling changes that affect their appearances

AGENCY NAME
Domestic Violence Lethality Screen for First Responders

Officer: _____ Date: _____ Case #: _____
 Victim: _____ Offender: _____

☐ Check here if victim did not answer any of the questions.

A "Yes" response to any of Questions # 1 – 3 automatically triggers the protocol referral.			
1.	Has he/she ever used a weapon against you or threatened you with a weapon?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Ans.
2.	Has he/she threatened to kill you or your children?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Ans.
3.	Do you think he/she might try to kill you?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Ans.

Negative responses to Questions # 1 – 3, but positive responses to at least four (4) of Questions # 4 -11 trigger the protocol referral.			
4.	Does he/she have a gun or can he/she get one easily?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Ans.
5.	Has he/she ever tried to choke you?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Ans.
6.	Is he/she violently or constantly jealous or does he/she control most of your daily activities?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Ans.
7.	Have you left him/her or separated after living together or being married?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Ans.
8.	Is he/she unemployed?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Ans.
9.	Has he/she ever tried to kill himself/herself?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Ans.
10.	Do you have a child that he/she knows is not his/hers?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Ans.
11.	Does he/she follow or spy on you or leave threatening messages?	<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Not Ans.

♦ An officer may trigger the protocol referral, if not already triggered above, as a result of the victim's response to the below question, or whenever the officer believes the victim is in a potentially lethal situation.

♦ Is there anything else that worries you about your safety? (If "yes", what worries you?)

Check one:	<input type="checkbox"/> Victim screened in according to the protocol	** Officer required to make call
	<input type="checkbox"/> Victim screened in based on the belief of officer	** Officer required to make call
	<input type="checkbox"/> Victim did not screen in	
If victim screened in: After advising him/her of a high danger assessment, did victim speak with the hotline counselor?		<input type="checkbox"/> Yes <input type="checkbox"/> No

Note: The questions above and the criteria for determining the level of risk a person faces is based on the best available research on factors associated with lethal violence by a current or former intimate partner. However, each situation may present unique factors that influence risk for lethal violence that are not captured by this screen. Although most victims who screen "positive" or "high danger" would not be expected to be killed, these victims face much higher risk than that of other victims of intimate partner violence.

Office of the Attorney General
 Office of Victims Advocacy – 800-372-2551 or 502-696-5312
 Adapted from and used with permission of Louisville Metro Police Department

AGENCY NAME
Domestic Violence Strangulation Worksheet

Submit this form with your Incident JC-3 Report

Date: _____ Report #: _____
 Victim's Name: _____ Suspect's Name: _____
 Officer's Name: _____ Code #: _____

Ask EVERY victim that reports being choked/strangled the following questions:

1. Did the victim lose bladder control (urinate or defecate on self)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2. Does the victim describe or say "I couldn't breathe"?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3. Does the victim describe "everything was going dark"?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
4. Did the victim lose consciousness/pass out?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
5. Did the suspect place his/her hands around your neck? <input type="checkbox"/> Right <input type="checkbox"/> Left <input type="checkbox"/> Both	<input type="checkbox"/> Yes	<input type="checkbox"/> No
6. Did the suspect apply pressure to your neck by some other method? Forearm: <input type="checkbox"/> Right <input type="checkbox"/> Left <input type="checkbox"/> Both Knee: <input type="checkbox"/> Right <input type="checkbox"/> Left <input type="checkbox"/> Both Foot: <input type="checkbox"/> Right <input type="checkbox"/> Left <input type="checkbox"/> Both Other: Ligature <input type="checkbox"/> Belt <input type="checkbox"/> Cord <input type="checkbox"/> Rope <input type="checkbox"/> Other	<input type="checkbox"/> Yes	<input type="checkbox"/> No
7. How long did the strangulation occur? seconds minutes <input type="checkbox"/> Unknown		
8. Was the victim smothered? If yes, with what?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
9. Were there multiple strangulation attempts? If yes, how many attempts?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
10. Was the victim shaken during strangulation?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
11. Was the victim's head pounded against the wall, floor ground or other object? If yes, on what?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Ask the following questions about the suspect:

1. Was the suspect consuming alcohol/drugs before or during this incident?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2. Is the suspect on probation or parole? Officer name/phone #:	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3. What is the suspect's dominant hand?	<input type="checkbox"/> Left	<input type="checkbox"/> Right <input type="checkbox"/> Both
4. What did the suspect say while strangling the victim?		
5. What was the suspect's demeanor during strangulation (appearance, behavior, etc.)?		
6. Are there any prior incidents of strangulation? If yes, how many?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Look for, and ask about, the following symptoms of injury in strangulation, mark all that apply:

Breathing:	<input type="checkbox"/> Difficulty breathing	<input type="checkbox"/> Hyperventilating	<input type="checkbox"/> Unable to breathe	<input type="checkbox"/> Other:	
Voice:	<input type="checkbox"/> Raspy	<input type="checkbox"/> Hoarse	<input type="checkbox"/> Coughing	<input type="checkbox"/> Difficulty speaking	<input type="checkbox"/> Unable to speak
Throat/Neck:	<input type="checkbox"/> Trouble swallowing	<input type="checkbox"/> Painful swallowing	<input type="checkbox"/> Neck pain	<input type="checkbox"/> Nauseous	<input type="checkbox"/> Vomiting
Behavior:	<input type="checkbox"/> Amnesia/Unable to remember	<input type="checkbox"/> Agitated	<input type="checkbox"/> Stressed	<input type="checkbox"/> Hallucinating	<input type="checkbox"/> Combativeness
Other:	<input type="checkbox"/> Dizzy	<input type="checkbox"/> Headache	<input type="checkbox"/> Fainting	<input type="checkbox"/> Urination	<input type="checkbox"/> Defecation

Look for visible signs of injury on the face, eyes, eyelids, nose, ears, mouth, under chin, chest, shoulders, neck and head. Look for redness, abrasions, scratches, bruises, swelling, bumps, impressions and pulled hair. Document in the narrative!

*Office of the Attorney General
 Office of Victims Advocacy – 800-372-2551 or 502-696-5312
 Adapted from and used with permission of Louisville Metro Police Department*

Americans with Disabilities Act 1990

Titles

- I. Employment
- II. Public Service (State and Local Government)
- III. Public Accommodation
- IV. Telecommunications
- V. Miscellaneous Provisions

Americans with Disabilities Act (ADAA) 2009

Purpose

- “To reinstate a broad scope of protection” by expanding the term “disability.”
- The original definition has previously been inappropriately narrowed by court decisions.
- It will now be much easier for individuals seeking the law’s protection to demonstrate that they meet the definition of “disability.”

ADA applies to over 6 million entities in the U.S. including:

- State and local governments
- Private employers
- Employment agencies
- Labor unions
- Public schools and universities
- Law enforcement

ADA does not apply to:

- Employers with fewer than 15 employees
- Executive branch of the federal government
- Private membership clubs
- Religious organizations
- Indian tribes

Individuals with disabilities:

- (1) An individual with a physical or mental impairment that substantially limits one or more of the major life activities of such individual.
- (2) An individual with a record of such a physical or mental impairment

An individual generally meets this criteria when, in the past, although not currently, had an impairment that substantially limited a major life activity; or was once misclassified as having a substantially limited impairment.

- (3) Regarded as having a physical or mental impairment. When an entity, or an employer takes an action prohibited by the ADA based on an actual or perceived impairment.

No longer does one have to show that the employer believed the real or perceived impairment substantially limited major life activity.

Major life activity

- Basic activity that most people in the general population can perform with little or no difficulty.

Major life activities recognized by the ADA include but are not limited to:

Major life activities 1990 ADA

walking	seeing	hearing	caring for oneself
breathing	speaking	learning	working
performing manual tasks			

Major life activities added by the ADA Amendment Act 2009

eating	sleeping	standing	concentrating
lifting	bending	reading	thinking
communicating	interacting with others		

AND

- Major bodily functions:

immune system	bowel	bladder
neurological	brain	endocrine
respiratory	circulatory	reproductive functions

Mitigating measures

- Eliminate or reduce the symptoms or impact of an impairment
- Should be ignored in determining if an impairment substantially limits an individual in performing a major life activity (example: a prosthesis which allows an individual to walk cannot be considered when determining if a major life activity has been affected)
- Exception: eyeglasses or contact lenses are not included
- ADA allows consideration of the negative effects from the use of a mitigating measure in determining if a disability exists. Example: medication side effects

Mitigating measures include but are not limited to:

medication medical supplies equipment or appliances low vision devices
prosthetics mobility devices oxygen therapy equipment and supplies
hearing aid(s) and cochlear implant(s) or other implantable hearing devices
use of assistive technology reasonable accommodation
learning behavior behavioral therapy physical therapy

Disabilities that are episodic or in remission

- ADA, as amended, states that an impairment that is episodic or in remission meets the definition of disability if it would substantially limit a major life activity when active
- Examples:

epilepsy	hypertension	multiple sclerosis (MS)
asthma	diabetes	depression

Title 1: Employment

Qualified individual with a disability must be able to:

- 1) Satisfy the required skills, experience and education required for the position
- 2) Perform the essential job functions with or without reasonable accommodation

Essential job functions:

- What the employer believes to be necessary for the job
- Tasks that are fundamental for the position

- May not include incidental duties

Items to be considered:

- Amount of time spent on a specific task or duty
- Duties performed by past and current workers in the position
- Positions exist to perform function
- Limited number of employees among whom that particular job can be distributed
- Employee has the expertise or ability to perform a particular function
- Update job descriptions when significant changes occur

Employers are responsible for accommodations when the employee declares a disability or if a disability becomes known to the employer (either through observation or a credible third party.)

When a disability is not obvious, the employer can request documentation.

Documentation should be:

- Current (within past three years, but no more than 5 years)
- Signed by a qualified professional
- Should include:
 - Description of the disability(s)
 - Impact on essential job functions
 - Current treatments and accommodations
 - Recommendations of proposed work related accommodations

Reasonable accommodations may include but are not limited to:

- Provide or modify equipment
- Make facilities accessible – removed barriers
- Provide readers or interpreters

Accommodations may include but are not limited to:

policies	phone adaptations	seating	technical assistance
oral instruction	interpreters	audio/visual materials	
accessible space	tapes of meetings	light switches	
calculators	extra time for tests	large print material	
note-takers	blocks under desk	flexible schedule	

Reasonable Accommodations

- The employer is not required to provide accommodations requested by employee
- The employer can choose another accommodation
- It MUST be effective

Required Interactive Process

The courts have held that an “interactive process” must be entered into in a good faith effort to find an appropriate accommodation.

- Request for accommodation(s)
- Documentation (if necessary)
- Discussions between employer and employee regarding potential effectiveness
- Accommodate in current position
- Reassign to a vacant position
- Monitor

Undue Hardship

- Size of business
- Financial resources
- Cost of accommodation
- Alteration or change in the delivery of service
- Disruption of other workers

Medical

- An employer cannot require a medical examination prior to a job offer
- A drug test can be required prior to a job offer if required of all applicants. It should only test for drugs not prescribed to the potential employee.
- The cost of health insurance has not increased because more people with disabilities are employed.

Title II: Public Services

Title II of the ADA prohibits discrimination against qualified individuals with disabilities by public entities (i.e., state or local government). All departments, agencies or activities, services, programs and facilities must be accessible to people with disabilities.

Examples:

employment	government offices open to the public
government meetings	public schools
universities	recreation and parks

Title III: Public Accommodation

No individual shall be discriminated against on the basis of disability in the full and equal employment of any company open to the public.

Examples including but not limited to:

- Public gathering places
- Places of lodging
- Stores
- Social service centers
- Restaurants

Title IV: Telecommunications

- Telecommunication relay services
Voice and TDD
711
- Closed captioning (Public service announcements)

Title V: Miscellaneous provisions

Covered Activities

- State immunity
- Retaliation
- Attorney's fees
- Coverage of Congress
- Other Federal and State laws

Topics of Frequently Asked Questions

Service Animals

Under the ADA, a service animal is:

- Individually trained to perform tasks that the individual cannot perform for him/herself such as:
 - Guiding people who are blind
 - Alerting individuals who are deaf or hard of hearing
 - Alerting people with seizures
 - Performing other tasks
- A dog [always] and a miniature horse [on a case-by-case basis]
No other animal is recognized by the ADA as a service animal
- On a leash, under the control of the owner, and clean
- Permitted in all areas of a facility open to the public including but not limited to:

restaurants	hotels	taxis
buses	shuttles	grocery stores
stores	hospital	theaters
medical offices	zoos	health clubs
parks	etc.	

Mobility Devices

Wheelchairs – are permitted anywhere the public is allowed to go

Other power driven mobility services

(Segways and other scooters are permitted unless they pose a direct threat, safety hazard or alters service, program or activities.)

Effective Communication

The ADA requires effective communication. Methods of achieving effective communication may include:

- Interpreters
- 711 – relay service
- Video Remote Interpreting [VRI]

- Writing can be used to communicate with people who are deaf or hard of hearing in limited situations.

Places of lodging – reservations for accessible rooms

- Reservations must be allowed to be made during the same hours as other reservations
- Staff should be able to identify and describe features
- Hold accessible rooms until all others are taken
- Remove accessible rooms from outside reservation systems, such as Priceline, Expedia, etc.

ADA Enforcement – Federal

- Title I: Employment Opportunity Commission
1-800-669-4000 1-800-669-6820 (TTD)
- Title II and III: Department of Justice
1-800-514-0301 1-800-514-0383 (TTD)
- Title IV: Federal Communications Commission
1-888-835-5322 (TTY)
- Office of Civil Rights, Department of Education
1-800-421-3481

ADA Enforcement – State

- Office of the State ADA Coordinator
502-564-3850 1-577-423-2933
<http://ada.ky.gov/>
- Protection and Advocacy
502-564-2967 1-800-372-2988
www.kypa.net
- Kentucky Commission on Human Rights
502-595-4024 1-800-292-5566
<http://kchr.ky.gov/>

Specialized ADA Information for Law Enforcement

When making an arrest consider (for accommodations):

- Does the person have mobility issues – use a cane, crutches, wheelchair and or walker?
- Is the person deaf or hard of hearing?
- Does the person have a visual impairment?
- How can this person be handcuffed?

Transporting a person with a disability

- Ask the person what type of transportation he/she can use.
- Ask how to lift or assist him/her when transferring in/out of the vehicle.
- Some individuals who use assistive devices like crutches, braces, or even manual wheelchairs can be safely transported in patrol cars.
- Safe transport of other individuals who use manual or power wheelchairs may require departments to make modifications to existing cars or vans.
- Another option is to use lift-equipped vans or buses. Police departments may consider other community resources like accessible taxi services.

Effective Communication

- The ADA requires that the expressed choice of the individual with the disability be given primary consideration in determining which communication aid to provide.
- A person with a disability is in the best position to know his/her needs.
- The ultimate decision re: method of communication is made by the police department.
- The department should honor the individual's choice unless it can demonstrate that another effective method of communication exists.
- Interpreters:
 - Police officers should generally not rely on family members (who are frequently emotionally involved or possible perpetrators) to provide interpreting.
 - Except in emergency situations when an interpreter isn't immediately available.
- Communicating with a person who has a visual impairment:
 - Identify yourself
 - State clearly and completely any directions or instructions – including any information that is posted visually
 - Officers must read aloud (in full) any documents that the person needs to sign. (The same applies to people who have difficulty with reading.)
 - Before taking photos or fingerprints, describe the procedures in advance so that the individual will know what to expect. (The same applies to people who have intellectual disabilities or brain injury.)

Etiquette: Tips for Interacting with People with Disabilities

The following information is intended as general tips when interacting with people with disabilities. Since each person and situation is unique, the best advice is to ask the person with a disability the best way you can assist him/her.

Person First Language

- The individual with the disability is a person first
- Person First Language:
 - Person with cerebral palsy
 - Person with a learning disability
 - Person who uses a wheelchair
 - Person with schizophrenia

Sensitive Use of Language

- Do not refer to the disability unless it is relevant.
- Do not sensationalize a disability by saying, “victim of” or “afflicted with,” etc.
- Avoid emotional descriptions
“Uses a wheelchair” not “confined to a wheelchair.”
“Walks with crutches” not “is crippled.”
- People with disabilities use words such as “see”, “hear”, “run”, “walk.”
- When speaking with a person with a speech impairment and you don’t understand, feel free to ask him/her to repeat or rephrase the statement.
- Remember that American Sign Language is a language itself. English is considered as a second language for someone whose primary language is ASL.
- While not a protected disability right, Title VI of Civil Rights Act of 1964 requires public service agencies that receive federal monies to provide equal language access for all non-English speakers.

Mobility Disabilities

- People who use crutches, canes or walkers should never be grabbed, they use their arms for balance
- Do not assume that using a wheelchair is a tragedy. It is a means of independence.
- Do not hang or lean of the wheelchair, it is an extension of the user’s personal space.
- Eye level > find somewhere to sit down when having a discussion

Deaf and Hard of Hearing

- People with varying levels of hearing loss who communicate via sign language – ASL (or another type of sign language) or spoken English.
- Hearing aids may be used. Remember that not all hearing aids allow individuals to hear speech; they may be used to hear loud noises.

- If needed, a person may use an American Sign Language (ASL) interpreter and also a Certified Deaf Interpreter.
- A Certified Deaf Interpreter is a person whose native language is ASL and have skills/ experience in working with individuals who are Deaf and have difficulty with ASL due to language deprivation, psychiatric or cognitive disability.
- When speaking with a person who uses an interpreter, maintain eye contact with the individual, not the interpreter.
- To get attention – tap on shoulder or arm
- Keep hands or objects away from mouth
- Use short sentences
- A small percentage of deaf individuals can read lips; the average accuracy of lip reading is about 30%

Visual Impairment

- People who have varying levels of visual functioning; not everyone with visual impairments is considered as “blind.” Do not assume level of functioning.
- Announce when you enter or leave a room.
- Do not place new items on the floor that may impede the person’s movement about the room.
- Guiding a person who is visually impaired is best accomplished by offering your arm or shoulder.
- Do not pat or play with the guide dog when he/she is working, always ask the owner first.
- Walk on the side opposite the guide dog.
- Read written information, if asked.

Learning Disabilities

- Average or above average intelligence
- Learning disabilities may occur:
 - spoken language written language
 - arithmetic reasoning
 - organizational skills
- People with dyslexia may need verbal instruction.
- Ask how the individual the best way for them to receive information.

Psychological Disability

- Making quick decisions may be difficult, allow time for a response.
- Do not assume that the person is dangerous based on diagnosis
- Do not assume that accounts of events are delusions
- People may have different reactions to questions/situations than what you would expect (example: may need extra time to process information)

Intellectual Disability

- The term “mentally retarded” is no longer acceptable.
- Speak in clear, short sentences.
- Do not talk baby talk.
- Making quick decisions may be difficult, allow time for a response.
- People with intellectual disabilities rely on familiar situations. A change in their routine may require additional time and patience.

Brain Injury

- People whose brains were injured in accidents, strokes, medication interactions, substance abuse, during military service, etc.
- People may have visible disability (mobility, vision, etc.) that resulted in the injury but not always.
- Speech and decision-making may be affected, allow time for a response.
- People with brain injuries rely on familiar situations. A change in their routine may require additional time and patience.
- Memory (short-term or long-term) may be affected. You may need to repeat yourself.
- Depending on where the brain was injured, people may display more emotions (crying, speak angry words, etc.)

Service Animals

- Under ADA Amendment Act a service animal is defined as a:
Dog (always) and a Miniature horse (on a case-by-case basis)
- No other animal is recognized by the ADA as a service animal
- Under the ADA a service animal is individually trained to perform tasks that the individual cannot perform for themselves.
- Examples:
 - Guiding people who are blind
 - Alerting people who are deaf
 - Alerting people who have seizures
 - Performing other tasks
- Must be on a leash
- Providing “emotional support” or comfort is not a task. Animals that only do this are not service animals.
- A service animal is permitted in all areas of a facility open to the public, including but not limited to:

restaurants	hotels	taxis
buses shuttles	grocery stores	stores
hospital	theaters	medical offices
zoos	health clubs	parks
		jail

Additional Information

- Always ask if a person with a disability needs assistance before you help.
- Do not assume there are more disabilities than are obvious.
- Do not speak louder to a person who has a visible disability. Just because someone may have a physical disability, please do not assume there are other disabilities as well.
- Be sensitive about physical contact.

For further Information, please contact:
Kentucky Office of the ADA Coordinator
502-564-3850 or 1-877-423-2933

Serving Victims with Limited English Proficiency

As Kentucky's population continues to become more diverse, prosecutors and victim advocates are faced with new challenges on how to effectively communicate and provide notice to victims with limited English Proficiency. The following tips may assist you in serving these diverse populations:

What is my legal obligation to provide language access? Under Title VI of the Civil Rights Act of 1964, any agency receiving federal funding (even as a subgrantee) is required to provide "meaningful access" to individuals with Limited English Proficiency ("LEP"). Meaningful access entails providing equal access to the same services without difference or delay, including providing competent interpretation free of charge and translating vital documents.

Who is Limited English Proficient? **Anyone** who has difficulty reading, writing, speaking or understanding English is considered to be LEP and is entitled to notice of their right to free interpretation. This includes defendants, victims and witnesses in a case.

Who can interpret? Title VI requires a "competent interpreter" to be used to interpret. Friends or family members are not considered to be competent interpreters, particularly in any case involving allegations of domestic violence, child abuse or sexual violence.

What is the best way to work with an interpreter?

- If possible, introduce yourself to the interpreter before the conversation and give the interpreter know a summary of what you are going to discuss. Remind the interpreter to interpret everything the victim/witness says without adding or deleting anything, and to speak in the first person. The interpreter should be a neutral conduit and not clarify, answer or explain anything to the victim/witness.
- If you are using an in person interpreter, seat the interpreter slightly behind the victim/witness. Speak directly to the victim/witness. This will allow you to maintain control of the conversation and build trust with the victim/witness. Do not sit in a triangle with the interpreter and victim/witness as this may lead to both parties focusing their attention on the interpreter and prevent building trust and clear communication between the professional and victim/witness.
- Speak in the first person. For example, tell the victim/witness: "You will need to tell the truth" rather than "Tell her that she will need to tell the truth." This makes the conversation clearer and builds rapport with the victim/witness.
- Speak in short sentences. Avoid jargon, slang and acronyms (e.g. "EPO"). This will take patience and may seem slow, but is more efficient and accurate in the long run.

- Above all, maintain your control of the conversation so that the victim/witness knows that you are the person who can answer his/her questions. If the interpreter and victim/witness begin to engage in side conversations, gently steer the conversation back and ask the interpreter to interpret everything that the victim/witness has said.
- At the end of the conversation, check for understanding and make sure to let the victim/witness know how to communicate with your office in the future. If possible, put a note in the file indicating that an interpreter will be needed for all future conversations.

Where can I find competent interpreters in my community?

The Administrative Office of the Courts certifies and registers interpreters for court proceedings. This trained pool of interpreters can be found at:

<http://courts.ky.gov/courtprograms/CIS/Documents/DirectoryInterpreters.pdf>. Many other agencies offer interpreters and translation services. For more information about interpreter resources and other legal rights of victims with limited English proficiency, contact the Office of Victims Advocacy at 502-696-5312.

..... 45